

APPEAL NO. 000116

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 21, 1999. The hearing officer determined that the appellant (claimant) was not injured in the course and scope of his employment on _____, and that since he did not sustain a compensable injury, he did not have disability. The claimant appealed, urged that the determinations of the hearing officer are against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The respondent (carrier) replied, urged that the determinations of the hearing officer are supported by sufficient evidence, and requested that her decision be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary will be contained in this decision. The claimant contended that on _____, he injured his back placing a five-gallon bottle of water on a dispenser. The carrier contended that the claimant had worked for the employer for about two months, was in a period of probation, was not performing well, had difficulties with his employer, staged an incident, and was not injured in the course and scope of his employment. The claimant was the only person at the work site at the time of the claimed injury. The claimant testified in his own behalf and had documents admitted into evidence. He stated that he was in an automobile accident in February 1999, had low back problems for only about seven days, and that he had no problems with his low back immediately before the accident. The owner of the employer and a coworker testified for the carrier. The carrier had photographs of the area where the claimed incident occurred and documents admitted into evidence. The claimant was treated by Dr. A, a chiropractor, after the February 1999 automobile accident and the claimed _____ injury at work. A final narrative report from Dr. A dated May 19, 1999, states that the claimant was having severe, achy, and dull low back pain on that day; that he sustained cervical, thoracic, and lumbar sprains/strains; and that he had lumbar spasms on days that he was seen in February, March, April, and May 1999. In a letter dated September 30, 1999, Dr. A opined that the claimant injured his lumbar spine in the work-related incident on _____. Dr. A referred the claimant to Dr. L. In a report dated September 3, 1999, Dr. L stated that the claimant denied any history of back pain prior to the accident on _____, and opined that the claimant's injuries were a result of the _____, accident. At the hearing, the carrier stated that it did not contend that the February 1999 injury was the sole cause of the claimant's low back condition but that it introduced evidence related to that injury to show that the claimant had credibility problems.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence.

Section 410.165(a). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer is not bound by the testimony of a medical witness when the credibility of that testimony is manifestly dependent on the credibility of the information imparted to the medical witness by the claimant. Texas Workers' Compensation Commission Appeal No. 952044, decided January 10, 1996. An expert witness's deductions from facts are not binding on the hearing officer even when they are not contradicted by another expert. Texas Workers' Compensation Commission Appeal No. 961610, decided September 30, 1996. In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer's determination that the claimant was not injured in the course and scope of his employment on _____, is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id.* Since we have found the evidence to be sufficient to support the determination that the claimant did not sustain a compensable injury, the claimant cannot have disability.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge