APPEAL NO. 000624

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 18, 2000. The hearing officer determined that the respondent (claimant) sustained an injury to his feet and ankles "on or about" _____, in the course and scope of employment. She determined that the claimant had disability due to his compensable injury from September 29, 1999, to December 4, 1999, due in part to an offset against temporary income benefits resulting from a bona fide offer of employment made by the employer, and covering the period of time between August 11 through September 28, 1999.

The appellant (carrier) has appealed the findings that claimant sustained an injury, and had the period of disability that was found by the hearing officer, asserting that there is no disability without a compensable injury, and an insufficient factual basis to justify claimant's "off work" period. The carrier recites what it believes are contradictions in and impeachment of the evidence given by the claimant. There is no response from the claimant.

DECISION

We affirm the hearing officer's decision.

All dates are 1999 unless otherwise indicated. The claimant had been employed by (employer) as a ceiling hangar for four years at the time he said he was injured on or about _____. This job required him to walk in stilts that were two to three feet tall. The stilts had a spring suspension. He said that on _____, later changed to _____, he stumbled on a screw on the floor and fell backwards. He was caught by a coworker whose name he could not recall, but as he fell, his stilts twisted and his straps broke. He was unable to continue working the rest of that day and said he went to see a doctor on his health insurance plan, Dr. F on the same day. Records in evidence showed, however, that he saw Dr. F on August 6th. Records further show that he reported to the safety manager, Mr. H, on August 27th that the date of his work-related accident was _____.

The claimant said that he was taken off work for three weeks. He later agreed that Dr. F told him he could work but was taken off stilts for three weeks. He returned to work cutting tile for the employer in a light-duty position. He changed his treating doctor to Dr. B, who took him off work on September 29th but discharged him from his care on December 4th. Claimant said he returned to work painting for another construction company, making more money than at the time of his injury.

Mr. H testified that when he first talked to claimant on August 11th, and put him on light duty pursuant to his release, no mention was made of the condition resulting from a work-related incident. He said that claimant told him he had been having problems with his feet for quite some time and had been advised by his doctor not to walk on stilts in that condition. He

said that on August 27th, claimant came and asked what "we are going to do about this" in reference to what he then said was an injury.

Mr. V, a supervisor, agreed that claimant had come to him and told him the springs (not the straps) on his stilts were broken. He agreed that claimant came to him later that day (_____) and said he would have to go home because his feet were hurting from a "callos" (Spanish word referring to corn). Mr. V said that no accident involving the stilts was reported.

The claimant denied that he reported calluses to Dr. F, although same are recorded in Dr. F's records, and says it was Dr. F who broached the topic with him. Dr. F's August 6th note records bilateral plantar fasciitis. On August 11th, Dr. F's light-duty slip recorded severe bilateral plantar fasciitis (heel pain); on September 2nd, Dr. F stated that claimant had a severe inflammation of both feet. Dr. B's working primary diagnosis was internal derangement of the feet and ankles.

The carrier has appealed various findings of fact, with no explanatory text, that appear to go to the extent of credit for the bona fide offer and the statement of Dr. B taking the claimant off work. We cannot agree that the determination of the hearing officer as to occurrence of an injury, credit through September 28th for the bona fide offer, and disability thereafter for a certain period, is against the great weight and preponderance of the evidence.

Although another fact finder could arguably have weighed the conflicting evidence and arrived at a different conclusion, it is not the task of the Appeals Panel to second guess the hearing officer, who is the sole judge of weight and credibility of the evidence. Section 410.165(a). When believed, the claimant's testimony alone may support a finding of injury and disability. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). In considering all the evidence in the

record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King=s Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer's findings on the appealed issues are sufficiently supported in the record, and we affirm her decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O=Neill
Appeals Judge

Elaine M. Chaney
Appeals Judge