

APPEAL NO. 000636

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 16, 2000. The issue at the CCH was whether the appellant (claimant) sustained an injury to his neck and lower back in addition to his right ankle injury on _____. The hearing officer determined that the claimant did not sustain an injury to his neck and/or lower back in addition to his right ankle injury. The claimant appealed, stated that the decision of the hearing officer is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and requested that the Appeals Panel reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Briefly, it is undisputed that on _____, the claimant jumped from a six-foot-tall residential fence and turned his ankle, injuring it. The claimant contended that he also injured other parts of his body, including his neck and low back. He testified that the force threw him into a post, that his head struck a post, and that his shoulder hit the ground. He said that he told the first doctor he saw about injuries other than his ankle and did not know why they were not included in early reports from the doctor. The claimant was questioned by an adjuster on May 12, 1998. A transcript reveals that the claimant was asked if the injury was confined to the ankle, and he replied that the main injury was from his knee all the way down to his ankle and his shoulder and ribs were a little sore. The claimant injured his neck in 1989 and had surgery that included a fusion. He testified that he had recovered from that injury and was capable of performing his job of installing and disconnecting cable at the time he was injured on _____. The medical evidence in reports of doctors who treated the claimant, the doctor who saw him at the request of the carrier, and the designated doctor provide varying opinions on whether the claimant injured his neck and low back on _____.

The burden is on the claimant to prove by a preponderance of the evidence the extent of his injury. 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). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the 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). An appeals level body is not a

fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would 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 recognized that aggravation of a preexisting condition may result in a compensable injury. He determined that the claimant did not meet his burden to prove that his compensable injury includes his neck and low back. The determinations of the hearing officer are 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, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers-Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge