

APPEAL NO. 000698

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 March 7, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable cervical spine injury, but not a lumbar spine injury, on _____, while in the course and scope of employment and that the claimant had disability beginning January 9, 1999, and continuing through the date of the CCH. The appellant (carrier) appealed, urged that the determinations that the claimant sustained a compensable cervical spine injury and had disability are against the great weight and preponderance of the evidence, and requested that the Appeals Panel reverse those determinations and render a decision that the claimant did not sustain a compensable injury and did not have disability. The claimant responded, urged that the evidence is sufficient to support the appealed determinations, and requested that they be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Briefly, the claimant testified that she was called into work to assist with moving the office from one location to another; while moving a filing cabinet with a supervisor, felt a pop between her shoulders with pain radiating up and down her back; continued to work for a few hours; reported the injury; and was later terminated on January 8, 1999. Medical records indicate that the claimant had previously been treated by a chiropractor for a low back problem. The claimant has been treated for the claimed injuries by chiropractors and has been referred to medical doctors. A March 1999 report of an MRI of the cervical spine states that the claimant has a 2 mm protruding disc at C3-4, a 2.5 mm protruding disc at C4-5, and a 2 mm bulging disc at C5-6. A May 1999 report of an MRI of the lumbar spine reveals a 2 mm bulging disc at L3-4 and a 3mm bulging disc at L4-5. The last chiropractor to treat the claimant took her off work and has not released her to return to work. The claimant testified that she is not able to work because of the pain. Dr. V examined the claimant at the request of the carrier. In a report dated September 10, 1999, Dr. V opined that the cervical injury would have adequately resolved by March 31, 1999, with a zero percent impairment rating; that he saw no evidence of operative intervention; and that the claimant had returned to her preinjury state and was fit for regular duty.

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). 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 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). That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn the factual determinations of a hearing officer. Texas Workers= Compensation Commission Appeal No. 94466, decided May 25, 1994. In her Decision and Order, the hearing officer stated that the claimant-s testimony was generally credible and that it and the medical evidence established that she injured her cervical spine in the course and scope of her employment on _____, and that she had disability since January 9, 1999. The appealed determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly 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). Since we find the evidence sufficient to support the appealed determinations of the hearing officer, we will not substitute our judgement for hers. 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

Elaine M. Chaney
Appeals Judge