

APPEAL NO. 000732

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 1, 2000. The hearing officer determined that the respondent-s (claimant) low back injury is part of the compensable injury of _____; and that claimant had disability from June 28, 1999, to July 2, 1999, and again from August 11, 1999, through the date of the CCH. The appellants (self-insured) appealed, urged that the determinations of the hearing officer are against the great weight of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor on both issues. The claimant responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant testified that on _____, two of four wheels on a chair came off, that she fell back, that she did not fall out of the chair, that the back of the chair hit the floor, that the fall jarred her back, and that about two hours after the fall she went to an emergency room (ER). The claimant saw Dr. R two days later. The records from the ER are not in the record. The records of Dr. R indicate that the claimant went to the ER on the date of the injury; that Dr. R saw the claimant on June 29, 1999; that the claimant reported that she twisted her back and left knee during a fall at work; that she had limited range of motion (ROM) of the lumbar spine; that his impression was back and left knee sprain; and that she was taken off work until July 2, 1999.

The claimant testified that she had been diagnosed with fibromyalgia about five years ago; that about two years ago she fell and injured both knees; that in the past she had some pain in her low back after she walked a lot, but that she did not have a back injury; that her pain in her knees and low back was worse after the incident in June 1999; that before the June 1999 incident, she had applied for long-term disability insurance benefits and social security disability benefits; that neither of those benefits had been approved; and that she was able to do her job until the fall in June 1999. She said that she returned to work in early July 1999 and worked until August 10, 1999, when she could no longer work and was taken off work by Dr. G.

Medical records from Dr. C indicate that on June 22, 1998, the claimant had mild osteoarthritis of both knees, low back/buttock area pain, and continued chronic fatigue; that on September 28, 1998, the claimant reported persistent lower back and bilateral knee discomfort from doing a lot of walking; that on December 21, 1998, her fibromyalgia was stable and that she had good ROM of all joints, including the knees; and that on April 12, 1999, her fibromyalgia was stable.

In a report dated August 11, 1999, Dr. G, an orthopaedic surgeon, stated that his diagnosis was tendinitis of both knees and lumbar strain with spondylolisthesis; and that her low back problem was long-standing and she had been treated for it as early as 1994. On that same day, Dr. A, apparently an orthopaedic surgeon in the same office as Dr. G, wrote that the claimant was to be off work indefinitely. In a follow-up visit note dated September 1, 1999, Dr. G said that the claimant had a grade 1 spondylolisthesis and spondylosis at L5-S1, that it was a preexisting condition, and that she had lumbar symptoms since 1994. In a report dated October 19, 1999, a physical therapist reported that the claimant had symptoms consistent with a diagnosis of lumbar sprain/strain with limited trunk and lower extremity mobility.

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, 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 refused 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). That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn factual determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. In his Decision and Order, the hearing officer stated that the claimant had preexisting conditions, including low back problems. The determination of the hearing officer that the claimant's low back injury is part of the compensable injury and evidence of preexisting conditions are not inconsistent and may possibly result in disputes that the Appeals Panel does not have jurisdiction to resolve. Only were we to conclude, which we do not in this case, that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb those determinations. 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

Elaine M. Chaney
Appeals Judge