APPEAL NO. 000790

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 16, 2000. The appellant (claimant) and the respondent (carrier) stipulated that on or about _____ or _____, the claimant sustained a compensable injury that is limited to his neck. The hearing officer determined that the claimant has not had disability resulting from the injury sustained on _____ or _____, for any time periods, specifically from August 10, 1999, through the date of the CCH. The claimant appealed, urged 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 decision of the hearing officer and render a decision in his favor. The carrier 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 was injured in _____ when he was struck in the neck by the handle of a dolly. He contended that he had disability beginning on August 10, 1999, and continuing through the date of the CCH. The Decision and Order of the hearing officer contains a statement of the evidence. Briefly, on the day of the injury and the next day, the claimant was seen by a nurse at the job site where he was injured. He was assigned to work at another job site, had a disagreement with the foreman at that job site, and his employment was terminated on March 17, 1999. On May 12, 1999, the claimant was treated in an emergency room for neck spasms. In June 1999, the claimant was treated for a heart attack and, in July 1999, he was treated for an unrelated fall. On August 10, 1999, Dr. H, a chiropractor, began treating the claimant and noted that the claimant complained of a stiff neck and shoulders, dizziness, blurry vision, jaw pain, and intense headaches. On that day, Dr. H took the claimant off work and has not returned the claimant to work.

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 disability, 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 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 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 upon 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 her Decision and Order, the hearing officer wrote that the evidence was conflicting and that the claimant was unable to establish by a preponderance of the credible evidence that from August 10, 1999, through the date of the CCH the claimant=s inability to obtain and retain employment at his preinjury wage was because of a compensable injury. 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). Only were we to conclude, which we do not in this case, that the hearing officer=s determination is 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 that determination. 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 determination of the hearing officer, we will not substitute our judgment 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:

Robert W. Potts
Appeals Judge

Philip F. O=Neill
Appeals Judge