APPEAL NO. 000850

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 28, 2000. The hearing officer determined that the appellant (claimant) did not injure her lower back while working for the employer on _____; that she did not timely report the alleged injury and did not establish good cause for failing to timely report the claimed injury; and that she did not have disability. The claimant appealed; attached documents that she contended show that she sustained a compensable injury and had good cause for not reporting the injury until August 9, 1999; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in her favor. The respondent (carrier) replied, stated that a handwritten statement attached to the claimant's appeal should not be considered because it is not in the record of the CCH, 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 attached a statement she wrote to her appeal. Much of the information in the statement is also in the record of the CCH. Under the provisions of Section 410.203(a) only the record of the CCH will be considered.

The Decision and Order of the hearing officer contains a statement of the evidence that includes quotations from medical records. Briefly, Dr. A saw the claimant for a bleeding disorder in March 1999. In a report dated June 21, 1999, Dr. A said that the claimant came in because last week she developed severe, crushing anterior chest pain radiating to the back. On July 2, 1999, Dr. A reported that the claimant continued to feel tightness over the chest as well as some discomfort over the thoracic spine and in the back and that they seemed to be worse after a bout of coughing. In a progress note dated July 7, 1999, Dr. A said that the claimant was having severe pain in the left lower abdomen radiating to the back, that the etiology was unknown, and that tests would be performed. An off-work slip states that the claimant was to be excused from work from July 7 to 19, 1999. In a letter dated July 30, 1999, Dr. A said the claimant's abdominal pain had decreased; that she continued to have back pain that radiates into the leg; that she had been referred to Dr. D, a neurosurgeon; and that Dr. D had referred her to Dr. R for conservative measures such as caudal block injections. In a letter to Dr. D dated July 29, 1999, Dr. R reported that the claimant had a six-month history of vague pain in her left hip and low back and a two-week history of severe low back and left buttock and leg pain; that an MRI showed disc desiccation at L5-S1 with possible posterior fissure; and that he would like to see conservative treatment. In a letter dated February 22, 2000, Dr. R said that the claimant's degenerative pattern does not imply an aging degenerative process and frequently trauma may cause the degenerative process.

The claimant testified that on _____, she felt pain in the left kidney area when she was preparing some ceiling fans for pick-up by a customer. She said that on July 26, 1999, she admitted changing July 14 to July 19 on the off-work slip and was terminated for doing that. She stated that she was upset over being terminated. The claimant said that she was seen by several doctors and did not know what was wrong with her until Dr. R told her on July 28, 1999. She said that she did not think she could file a workers' compensation claim after she had been terminated; that on August 9, 1999, she was told that she could file a claim; and that on that day she notified the employer of the injury and filed a claim.

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 a claim, 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). Not knowing the requirements for notifying an employer of an injury or for filing a claim is not good cause for not giving timely notice of an injury. Texas Workers' Compensation Commission Appeal No. 93997, decided December 16, 1993. 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 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.

Tommy W. Lueders
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Dorian E. Ramirez
Appeals Judge