APPEAL NO. 000866

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 31, 2000. The hearing officer determined that the appellant (claimant) was not injured in the course and scope of his employment on _____; that due to the claimed injury, the claimant was unable to obtain "or" (should have been "and" as provided in Section 401.011(16)) retain employment at wages equivalent to the preinjury wage beginning October 4, 1999, and continuing through the date of the CCH; that the respondent (carrier) is not relieved of liability for the claimed injury because the claimant provided timely notice of the claimed injury to the employer; and that since the claimant did not sustain a compensable injury, he did not have disability. The claimant appealed, stated that the evidence is sufficient to establish that he was injured in the course and scope of his employment and had disability, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The carrier filed an appeal conditioned on the claimant requesting review. It urged that the hearing officer's determinations that the claimant timely notified the employer of the claimed injury and that due to the claimed injury the claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage for a certain period are so against the great weight and preponderance of the evidence as to be manifestly unjust. A response from neither party has been received.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a thorough statement of the evidence and reflects that he considered the evidence presented by both parties. Briefly, the claimant testified that on _____, he injured his knee when he had to use it in the process of removing upholstered parts in the cab of trucks; that he told his immediate supervisor about the injury that day; that he continued to work in pain; that his knee continued to get worse; that in early October 1999 he reinjured his knee; that he went to Dr. E, a chiropractor, on October 4, 1999; and that since that day, he has not been able to work because of the knee injury. Medical records from Dr. E and a report of an MRI indicate that the claimant has a ganglion cyst, abnormality of the medial meniscus, and chondromalacia. The claimant was referred to Dr. C and Dr. C recommended arthroscopic surgery. Mr. B, a district service manager for the employer, testified about the claimant's having been counseled and warned about not doing work that he was directed to do and not appearing for work when he was scheduled to work. He stated that records do not indicate that the claimant worked on trucks on _____, as the claimant testified he did. Mr. B said that the claimant was terminated on October 4, 1999; that the claimant did not report an injury to him before he was terminated; and that the claimant's immediate supervisor told him that he did not recall the claimant reporting an injury on _____.

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. 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. 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. The evidence is clearly conflicting and credibility of witnesses was an important question for the hearing officer to consider. It may be unusual for the hearing officer to have believed the testimony of the claimant that on _____, he told a supervisor that he had injured his knee while working and not to have believed the testimony of the claimant that he sustained an injury to his knee on that day; however, those determinations, especially considering all of the evidence in the case before us, are not necessarily inconsistent. 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 could support different results. 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 determinations appealed by the claimant and the carrier are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be a sound basis to disturb those determinations. 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 determinations of the hearing officer appealed by both parties, 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:

Alan C. Ernst
Appeals Judge

Philip F. O'Neill
Appeals Judge