APPEAL NOS. 000892
AND 001309

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 appellant (claimant) and the respondent (carrier) agreed that the compensable injury sustained by the claimant on _____, is not a producing cause of the claimant's bilateral knee problems. Concerning the claimed _____, injury; the hearing officer determined that the claimant was not injured in the course and scope of her employment on _____, and that since she did not sustain a compensable injury, she did not have disability. The claimant appealed those determinations, stated that evidence of a work hardening program was not admitted, contended that the evidence established that she was injured at work and had disability, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in her 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.

In an opening statement at the CCH, the ombudsman assisting the claimant stated that it was the claimant's position that the _____, compensable injury was not a producing cause of her bilateral knee problems; that there was no diagnosis of a knee problem or treatment of a knee as a result of the _____, compensable injury; and that her current knee problems are related to the _____, compensable injury. The attorney representing the carrier stated that concerning the _____, injury there was an issue related to a hip injury, but that that issue was not before the hearing officer.

In her appeal, the claimant stated that "the work hardening program" was not admitted; that during and after the six-week program her pain increased and during the test she had consistent heart rate changes. At the CCH, the claimant offered seven exhibits into evidence, the carrier did not object to any of them, and all seven were admitted into evidence. In a report dated October 6, 1999, Dr. JS, an orthopedic surgeon who treats low back disorders, stated that he was treating the claimant for a _____, injury and that she was to begin a work hardening program. A report of Dr. H dated January 31, 2000, states that upper back pain began during work hardening and has persisted. The claimant mentioned work hardening during her testimony. The record does not contain a report of any work hardening that the claimant received and the record does not indicate that she offered such a report into evidence. The claimant was not denied due process concerning information related to work hardening.

The Decision and Order of the hearing officer contains a brief statement of the evidence. The claimant sustained a compensable injury on _____. She said that she injured her neck, back, right shoulder, and right elbow. Reports from Dr. NS state that

she diagnosed cervical, lumbar, and right elbow strains. The claimant testified that she fell at the end of her shift on _____, and had pain in her low back and both knees. She received initial treatment from Dr. NS. Dr. NS referred the claimant to Dr. JS. In a report dated October 5, 1999, Dr. JS diagnosed lumbar sprain and obesity and recommended an MRI. In a report dated December 14, 1999, Dr. JS said that the claimant complained of lower back pain and pain in both knees; that there was mild swelling in both knees; that both knees were stable; that there was no history of knee injury on _____; that the diagnosis was lumbar strain and obesity; and that the claimant had reached maximum medical improvement (MMI) on December 10, 1999. In a report dated November 17, 1999, Dr. C stated that for the _____, injury the claimant reached MMI on July 12, 1999.

The burden is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. The testimony of the claimant alone may be sufficient to satisfy the burden of proof. Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 1991. 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. In her Decision and Order, the hearing officer pointed out inconsistencies in what the claimant testified to about the fall and what medical records indicate that the claimant told health care providers about the fall and stated that she did not find the claimant's testimony credible with respect to the claimed 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). The hearing officer's determination that the claimant did not sustain any injuries to her body as a result of a claimed fall on _____, is 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 that determination of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id*. Since we have found

the evidence to be sufficient to support the determination that the claimant did not sustain a compensable injury on _____, the claimant cannot have disability from that claimed injury.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge