APPEAL NO. 000948

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 April 10, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury to his right ankle, right knee, and low back on _____; and that claimant had disability beginning October 4, 1999, and continuing through the date of the CCH. The appellant (carrier) appealed; urged that the determination that the claimant sustained a compensable injury is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust; contended that since the evidence is insufficient to establish that the claimant sustained a compensable injury, the claimant cannot have disability; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant did not sustain a compensable injury and did not have disability. A response from the claimant has not been received.

DECISION

We affirm.

The claimant testified that on _____, he stepped on a curb near the swimming pool and his foot slipped; that he twisted and hurt his right ankle, right knee, and low back; that his ankle and knee swelled very badly after the incident; that if he took off work to go to a doctor, there would not be anyone to do the work so he did not go to a doctor and treated himself with ice and other things; that he thought he would get better, but did not; that after another person was hired, he went to a Veterans Affairs (VA) hospital at the end of July or early in August; that he went to a VA hospital because he did not have money to pay a regular doctor; and that therapy improved his ankle and back. He said that the employer sent him to Dr. M and that Dr. M gave him an off-duty slip and told him that he needs to have surgery on his meniscus. The claimant stated that he had problems with his ankle before the incident; that he previously had problems with his left knee, but not his right knee; that he had low back problems after he moved a refrigerator, but that problem had cleared up; and that immediately before he stepped on the curb, he did not have any problems with his right ankle, right knee, or low back.

In statements dated October 25, 1999, and December 5, 1999, Mr. P, a coworker, stated that he saw the claimant hurt his right ankle and right knee near the swimming pool; that the claimant showed him a big knot that had formed on his right knee; that the claimant was in pain; and that the claimant reported the injury to his supervisor and showed the supervisor the bruise. In a statement dated October 25, 1999, Ms. A, a coworker, said that the claimant hurt his right ankle and right knee; that he reported the injury to his supervisor; and that she helped the claimant install a toilet and do some plumbing work in a kitchen because he could not get on his knee to do the work.

In an Initial Medical Report (TWCC-61) dated October 25, 1999, Dr. G gave a history consistent with the claimant's testimony; indicated that he diagnosed lumbar disc

syndrome, lumbar radiculitis, torn meniscus in the right knee, and right ankle sprain; and ordered MRIs of the ankle, knee, and low back. A report from Dr. M dated October 4, 1999, says that the claimant had work-related torn medial meniscus and a significant inversion ankle sprain and that surgery should be performed on the knee. MRIs performed on February 1, 2000, revealed broad-based disc bulges at L3-4 and L4-5; a large annular bulge at L5-S1; and a Grade 1 or Grade 2 tear in the posterior horn of the medial meniscus. Records from the VA hospital are also in the record. There is some indication that the claimant may not have told all of the health care providers about previous problems he may have had.

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. 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). Only were we to conclude, which we do not in this case, that the hearing officer's determination that the claimant sustained a compensable injury to his right ankle, right knee, and low back on _____, 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). The carrier appealed the hearing officer's determination that the claimant had disability based on the contention that the claimant did not sustain a compensable injury. We found the evidence to be sufficient to support the determination that the claimant sustained a compensable injury.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Dorian E. Ramirez
Appeals Judge