APPEAL NO. 000981

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 10, 2000. The hearing officer determined that the date of the claimed injury is _____; that the appellant (claimant) did not sustain an injury in the course and scope of her employment on that day; that the claimant notified the employer of the claimed injury on December 13, 1999; that after December 4, 1999, the claimant did not have good cause for failing timely to notify the employer of the claimed injury; that the respondent (carrier) is relieved of liability because the claimant did not timely report the claimed injury to the employer and did not have good cause for not timely reporting it; that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy; that the claimant was unable to obtain and retain employment at wages equivalent to her preinjury wage beginning _____, and continuing through March 13, 2000; and that since the claimant did not sustain a compensable injury, she did not have disability. The claimant appealed the determinations adverse to her, stated that the evidence shows that she is entitled to benefits, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in her favor. A response from the carrier has not been received.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary of the evidence will be included in this decision. The claimant testified that on _____, she and another employee put two boxes together to make a box large enough to ship an item; that they pushed the boxes together too much, making the box too small; that each of them pulled on a box to make the box larger; that she felt a snap in her lower back; that she did not think it was serious; and that she continued to work. She said that on October 29, 1999, she started having leg pain; that she did not relate the pain to the incident at work; that on October 31, 1999, she went to an emergency room and was hospitalized until November 4, 1999; that she was sedated with pain medication while she was in the hospital; that an MRI performed on November 2, 1999, revealed herniated discs; that on November 29, 1999, Dr. S asked her about her activities; that she told Dr. S about the _____, incident; and that he told her that the _____, incident could have caused the ruptured discs. The claimant stated that she was released to return to work with restrictions on March 13, 2000; that the next day, she took the paper with restrictions to the employer; and that she was told that they did not have a position for her that met the restrictions.

A coworker testified that she recalled the claimant and her pulling on the box, that she did not recall the claimant saying that she felt a snap in her back, that the claimant prepared a statement for her to sign, and that she did not sign the statement because it was not accurate. Another employee testified that she did not see the incident, that the

claimant asked her to write a statement and told her what to put in it, and that she did not make a statement because she was not there and did not see how she could help. The employer's operations manager testified about conversations with the claimant and the claimant's spouse; that she first learned of the claimed injury on December 13, 1999; and that the claimant brought a document with her restrictions, that she told the claimant that the restrictions could be accommodated and offered her a job, that the claimant wanted to go back to her previous job that was no longer available, and that the claimant said that she would not even try the job that she was offered.

A neurological consultation report from Dr. R dated November 1, 1999, states that the claimant was walking in a shopping center and suddenly started having pain the right lower extremity, that she had not had similar episodes in the past, and that an MRI and nerve conduction studies were recommended. In a report dated November 1, 1999, Dr. M stated that his impression was that the claimant had right leg pain, probably secondary to radiculopathy. A report of an MRI dated November 2, 1999, revealed degenerative disc disease at L3-4 and L4-5, mild bulging disc at L4-5, mild herniated disc at L4-5, mild herniated disc at L5-S1, and degenerative changes in the lumbar spine. In a report dated November 4, 1999, Dr. U stated that the claimant gave a history of having leg pain while walking, that she had right L4 radiculopathy secondary to a herniated nucleus pulposus, and that he discussed the natural history of a herniated disc with her. In a report dated January 19, 2000, Dr. S said that the claimant injured her back while making boxes at work; that she was pulling down on a box and injured her back; that she was treated at a hospital by Dr. M; and that now he, Dr. S, was following the claimant for a herniated disc.

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 an injury in the course and scope of employment, 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; judges the credibility of each and every witness; determines the weight to assign to each witnesses' 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). In a case such as the one before us where both parties presented evidence on the disputed issue of whether the claimant was injured in the course and scope of her employment, 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. 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 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 was not injured in the course and scope of her employment on _____, is so against the great weight and preponderance of the evidence as to be 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 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.

Findings of fact and comments in the statement of the evidence in the Decision and Order indicate that the hearing officer could have been more precise concerning whether the claimant timely reported the claimed injury to her employer and whether she had good cause for not reporting it earlier. Generally, Sections 409.001 and 409.002 provide that if an employee does not report an injury to the employer not later than the 30th day after the date of the injury the carrier is relieved of liability for the claimed injury unless the Texas Workers' Compensation Commission (Commission) determines that good cause exists for the failure to provide notice in a timely manner. The claimant has the burden of proving that good cause exists for not timely reporting an injury to the employer. Texas Workers' Compensation Commission Appeal No. 92657, decided January 15, 1993. Belief that an injury is trivial may constitute good cause for delay in reporting an injury to the employer; however, the good cause for delay in reporting must continue to the time that notice was actually given to the employer. Texas Workers' Compensation Commission Appeal No. 950620, decided June 1, 1995. Belief that symptoms are related to another problem may be sufficient to support a determination that a claimant trivialized an injury. Texas Workers' Compensation Commission Appeal No. 93698, decided September 22, 1993. Determining the date when a claimant no longer has good cause for trivializing an injury does not start a 30-day period for a claimant to report an injury to the employer. A claimant must act as an ordinarily prudent person in reporting an injury after there is no longer good cause for trivializing the injury. In Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994, the Appeals Panel held that reporting the injury 15 days after the claimant no longer had good cause for trivializing the injury was too long. The hearing officer placed significance on November 4, 1999, the day the claimant was released from the hospital and the day Dr. U discussed the history of a herniated disk with claimant. Determinations by a hearing officer concerning good cause are reviewed using the abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 960903, decided June 21, 1996. The evidence is sufficient to support the determination that the claimant did not report the claimed injury to the employer until December 13, 1999. King's, *supra*; Pool, *supra*. The hearing officer did not abuse her discretion in determining that the claimant did not have good cause until December 13, 1999, for not reporting the claimed injury to the employer.

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, the claimant cannot have disability.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge