APPEAL NO. 001016

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 convened on December 14, 1999, with (hearing officer 1) presiding as hearing officer. She granted a continuance to permit appellant (claimant) to seek legal counsel. The CCH was again convened on February 15, 2000, with (hearing officer 2) presiding. He granted a continuance because the claimant was unable to attend. A CCH was held on April 11, 2000, with hearing officer 2 presiding. The hearing officer 2 determined the date of injury of the claimed injury is _____, as alleged by the claimant; that the claimant did not sustain an injury on _____, _____, or _____, _____, or any other relevant date; that the claimant did not sustain a compensable injury on any of those dates; and that the claimant has not had disability. The claimant appealed, urged that the decision of the hearing officer is so against the great weight and preponderance of the evidence as to be manifestly unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that he sustained a compensable injury on _____, and had disability from April 2, 1999, to the date the CCH was held. The respondent (carrier) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The Decision and Order of hearing officer 2 contains a statement of the evidence. Only a brief summary of the evidence will be included in this decision. The claimant testified that at work on _____, he tripped; fell; and injured his head, neck, right shoulder, and back. He said that he broke his glasses and could not afford to have them replaced. The claimant stated that four employees were nearby sitting on a pallet when he fell; that he knew the names of three of them; that Mr. JS, a friend, also saw him fall; that he spent the weekend in bed because of the injury; that he first saw Dr. L; that he worked for about three weeks after the injury; that Mr. JS recommended Dr. O, a chiropractor; that he went to Dr. O; and that Dr. O took him off work. In a sworn statement, Mr. JS said that he saw the claimant fall and recommended Dr. O.

Dr. O testified to a history of the injury consistent with the claimant's testimony; that in his, Dr. O's, opinion the claimant's headaches and neck, back, right shoulder, and right arm problems resulted from the fall; that he, Dr. O, took the claimant off work on April 12, 1999; and that in October or November 1999, the claimant was capable of light-duty work. Dr. O's record dated April 12, 1999, has a question "how referred to this office" and has the answer "phone book." Transcripts of statements of the three persons the claimant said were nearby when he fell indicate that they did not see the claimant fall and did not hear him scream. In an affidavit dated November 2, 1999, Ms. LS, the claimant's girlfriend, said that on a Friday in March 1999, the claimant arrived at his residence at the usual time; that he was in extreme pain and his glasses were broken; that he told her what had happened;

and that he stayed in bed all weekend. At the CCH, Ms. LS testified that some time after March 1999 the claimant again wore glasses and wore them until he broke them in a motor vehicle accident in February 2000.

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, 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. 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 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. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement 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). The hearing officer is not bound by the evidence from a medical witness when the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the medical witness by the injured worker. Texas Workers' Compensation Commission Appeal No. 952044, decided January 10, 1996. An expert witness's deductions from facts are not binding on the hearing officer even when they are not contradicted by another expert. Texas Workers' Compensation Commission Appeal No. 961610, decided September 30, 1996. In his statement of the evidence hearing officer 2 pointed out inconsistencies in the evidence. He also made five findings of fact pointing out inconsistencies between the claimant's testimony and evidence in statements and testimony of other persons and made a finding of fact that the claimant's testimony is not persuasive. The determinations of hearing officer 2 that the claimant was not injured in the course and scope of his employment and did not sustain a compensable injury are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. 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 those determinations of the hearing officer, we will not substitute our judgement for his. 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, the claimant cannot have disability.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Dorian E. Ramirez
Appeals Judge

Judy L. Stephens
Appeals Judge