

APPEAL NO. 001047

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 20, 2000,. The issues were did the respondent (claimant) sustain an injury to his head, neck, low back, and right shoulder in addition to his right arm and right knee on _____, and did he have disability. The hearing officer determined that the claimant sustained an injury to his neck, low back, right shoulder, right arm, and right knee on _____; that the injury does not include his head; and that the claimant had disability from September 3, 1999, to March 6, 2000, and at no other time. The appellant (carrier) requested review; stated that the case turned on the credibility of witnesses; contended that the claimant failed to meet his burden of proof and that the evidence is insufficient to support the hearing officer's determinations; 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 other than to the right arm and knee and did not have disability. A response from the claimant has not been received. The determination that the claimant's injury does not extend to and include his head has not been appealed and has become final. Section 410.169.

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. It is undisputed that on _____, the claimant was a passenger in a pickup truck that rolled over once and stopped on its wheels. The claimant testified that the truck was traveling about 55 miles per hour just prior to the accident, that he was not wearing a seat belt, that he hit his head and shoulder on the top of the vehicle, that he could not walk when he got out of the truck, that he was taken to an emergency room (ER), that he does not speak English and had a difficult time communicating with the doctor, and that he was given an injection and released. The ER report indicates that the claimant complained of pain to the right side of his neck, right shoulder, right arm stump, and right knee. The claimant said that he did not complain of back, neck, and head pain until he saw Dr. J, a chiropractor, on September 13, 1999. Reports of Dr. J indicate that the truck flipped several times; that he, Dr. J, diagnosed cervical and lumbar sprain/strain, right shoulder sprain/strain, right knee sprain/strain, lumbar radicular syndrome, and post traumatic suboccipital cephalgia; and that he took the claimant off work. In reports dated September 13 and 20, 1999, Dr. S reported that the claimant had significant contusion to muscles and joints of the right lower extremity, lumbosacral contusion, and cervical sprain/strain and recommended an MRI or CT scan if the claimant did not improve.

The owner of the employer testified that he arrived at the scene of the accident about 15 minutes after it happened, that all of the employees stated that they were not hurt badly, and that he insisted that they go to an ER to be checked.

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). In its appeal, the carrier stated that the case turned on the credibility of the witnesses. The hearing officer found the claimant to be credible. The hearing officer's determinations concerning extent of injury and disability are 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 the determinations of the hearing officer, 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:

Philip F. O'Neill
Appeals Judge

Dorian E. Ramirez
Appeals Judge