

APPEAL NO. 001048

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 19, 2000. The appellant (carrier) and the respondent (claimant) stipulated that the claimant sustained a compensable injury on _____. The hearing officer determined that the claimant had disability beginning March 24, 1999, and continuing through the date of the CCH. The carrier appealed, urged that the decision of the hearing officer is against the great weight and preponderance of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant did not have disability from March 24, 1999, through the date of the CCH. The claimant responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant contended that he did not earn wages during the time the hearing officer determined that the claimant had disability. The carrier contended that during that time the claimant earned wages performing remodeling for Mr. JM. 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 the claimant had filed papers to do business as HECSA and had a license to perform construction. From June to December 1999, Mr. JM paid HECSA \$14,500.00 to do remodeling. The claimant and Mr. GS, the claimant's cousin, testified that Mr. GS did not have a license to perform construction; that the claimant obtained the necessary permits for the remodeling; that Mr. GS was in charge of the remodeling; that checks were cashed or deposited in the HECSA account; that Mr. GS paid a plumbing subcontractor, employees who worked at the site, and for materials used from money received from Mr. JM; and that the claimant did not perform any work and was not paid any of the funds received from Mr. JM. The carrier argued that the claimant had not been truthful in his testimony. It introduced evidence that could be used to question the credibility of the claimant and Mr. GS. The carrier did not introduce any evidence to directly show that the claimant received any wages from the \$14,500.00 paid by Mr. JM to HECSA.

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). 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. 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 found the claimant to be credible and stated that he met his burden of establishing that he was unable to obtain and retain employment at wages equivalent to his preinjury wage as a result of the compensable injury. The determinations of the hearing officer 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 hers. 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:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge