

APPEAL NO. 001096

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 18, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; and that claimant had disability beginning November 9, 1999, and continuing through the date of the CCH. The appellant (carrier) appealed, stated evidence favorable to its position, contended that the claimant's testimony was not credible, urged that the hearing officer erred in relying on the testimony of the claimant, 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 on _____, and did not have disability. A response from the claimant has not been received.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Briefly, the claimant testified that on _____, he was operating heavy equipment; that he pulled on a lever and felt sharp pain in his back at the area of the shoulder blade and in his neck; that he thought that it was a pulled muscle; that he finished the shift; that after work he told a coworker what had happened; that the next day he went to another state to take a test for driving trucks that carry chemicals; that second day after his accident, his pain was worse; that he went to an emergency room (ER); that he told the people in the ER that he had been operating heavy machinery; that he was given an injection and medication; that he worked light duty for the employer and was treated like "crap"; that he thought that the employer was looking for a reason to let him go; and that he quit working for the employer. The claimant said that he went to a doctor, was taken off work, and was later released to return to work; that after being released to return to work, he worked for two other employers at wages that were considerably less than the wages he earned working for the employer; that he took pain medication and worked with pain; that he quit the second job because he could no longer do the work that he was asked to do; and that he could not perform the work he was doing when he was injured. The claimant said that the video showed him doing some work in a garden; that he did the work for about 30 or 40 minutes; that after he did that work, he had severe pain; and that he could not do the work eight hours a day.

An ER report dated October 28, 1999, states that the claimant had been pulling on a heavy machine and had an employment-related dorsal strain. A report dated November 1, 1999, indicates that the claimant was lifting on a handle on heavy equipment and had employment-related neck, shoulder, and back pain/injury. On November 15, 1999, a doctor took the claimant off work. In two transcripts of questions and answers, the claimant's supervisor said that on the day of the claimed injury, the claimant did not tell him that he had been hurt; that two days later he was told that the claimant had injured himself;

and that the claimant told him that he did not know exactly where he injured his shoulder and neck and that he assumed it happened at work. Another transcript indicates that a coworker said that the claimant told him that he could not go to work because his shoulder and arm were hurting; that the claimant asked him to tell the supervisor; that after that, he saw the claimant lift things without any indication that he was injured; that one time after the claimant had been told that the supervisor was there, he acted like his neck was stiff; and that he thought the claimant was faking.

The burden is on the claimant to prove that he sustained an injury in the course and scope of his employment, Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991, and that he had disability, Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993. 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 and disability, the testimony of a claimant is not conclusive but only raises factual issues 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). At the CCH and on appeal, the carrier stated that the claimant was not credible. The hearing officer did not agree and resolved the disputed issues in favor of the claimant. Only were we to conclude, which we do not in this case, that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or 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 the determinations of the hearing officer, we will not substitute our judgement 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:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge