APPEAL NO. 001248

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 May 12, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease on _____; and that the claimant had disability beginning September 20, 1999, continuing through the date of the CCH. The appellant (carrier) appealed on sufficiency grounds. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that he was hired on August 23, 1999, as a painter which required him to use painting rollers, sanders and spray air brushes. The claimant asserted he sustained a compensable lower back injury in the form of an occupational disease caused by the required lifting, bending and stretching of his employment. The claimant stated he knew his injury to be work related by _____, although he began having pain the week before this date. The claimant denied that he had any back problems prior to the date he began working for the employer. Between August 23, 1999, and _____, the claimant worked 12 days. The claimant worked at his regular duties until his last day of work on September 17, 1999, although he missed various days without calling his supervisor to advise that he was not coming to work.

The claimant testified he sought medical treatment on September 20, 1999, from Dr. C, who provided massage and electrical stimulation therapy. The claimant offered an MRI, performed on October 25, 1999, and interpreted by Dr. F, as indicating a 4-5 mm herniation at L5-S1. The claimant testified he was taken off work on September 20, 1999, by Dr. C; that he has not returned to work because of his pain and no doctor has released him back to work. The claimant testified his last day of treatment occurred on October 31, 1999, because the carrier denied the claim and would not authorize anymore treatment. The claimant asserted disability from September 20, 1999, through the day of the CCH although he admitted that he told his supervisor on September 16, 1999, that he felt good.

The claimant was examined by Dr. G, on January 13, 2000, at the request of the Texas Workers' Compensation Commission. By letter dated April 18, 2000, Dr. G opined that the claimant sustained a lumbar strain from repetitive trauma at work, but he disagreed with the MRI reporting a disc herniation. He wrote that the claimant had a bulging disc rather than a herniation because the claimant's symptoms were inconsistent with a disc herniation.

The claimant had the burden to prove that he sustained a compensable injury in the form of an occupational disease on _____, and that he had disability from September 17, 1999, though the date of CCH. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ).

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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were 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 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 hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge