APPEAL NO. 001298

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 16, 2000. The hearing officer determined that the appellant (claimant) did not sustain an injury as the result of repetitive traumatic activity in the course and scope of her employment; that there is no date of injury as the claimant did not sustain an injury; and that the claimant did not have disability. The claimant appealed, stating why she disagreed with those determinations. The respondent (carrier) replied, urged that the evidence is sufficient to support the determinations that the claimant was not injured in the course and scope of her employment and did not have disability, and requested that the decision of the hearing officer be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a through statement of the evidence. In her job, the claimant used the telephone, retrieved information in a computer, and put information into a computer. She contended that she sustained a repetitive trauma injury as the result of her work. The carrier contended that she was not injured in the course and scope of her employment and filed a claim because she was terminated for being rude to customers. The claimant saw numerous doctors. In a letter a neurosurgeon wrote that the claimant's main problem that day was that she very much wanted him to say that her complaints of pain and knots in both arms were job related and that he was not actually sure how it would be that.

The burden is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. The testimony of the claimant alone may be sufficient to satisfy the burden of proof. Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 1991. 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, determines 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). In her Decision and Order, the hearing officer stated why she did not find some of the evidence of the claimant to be

credible and that the credible evidence did not support a finding that the claimant sustained an injury as a result of repetitive activity in the course and scope of employment. 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's determinations that the claimant did not sustain an injury in the course and scope of her employment and did not have 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 those determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The date of injury of a claimed injury has legal significance. The issue of the date of injury of a claimed injury was before the hearing officer. She should have made determinations to resolve that disputed issue, but she did not. Under the circumstances of the case, we do not remand for resolution of that disputed issue.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Section Manager