APPEAL NO. 001301

This appeal is brought 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 17, 2000. The appellant (self-insured) and the respondent (claimant) stipulated that the claimant sustained a compensable left ankle injury on _____. The hearing officer determined that the compensable injury includes the low back and that the claimant had disability beginning on February 15, 2000, and continuing through the date of the CCH. The self-insured appealed, pointed out evidence favorable to its position and inconsistencies in the evidence presented by the claimant, urged that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant's compensable injury does not extend to his low back and that he 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. Only a brief summary of the evidence will be included in this decision. The claimant worked as a teacher and a coach for the school district. He sprained his ankle while running. He testified that he went to Dr. DP the same day; that the pain was severe; that on the first visit to Dr. DP, he did not complain of a back problem because he did not have back pain; that during the next visit, he told Dr. DP that he had pain radiating from his ankle to his back; that Dr. DP referred him to an orthopaedic association; that in December 1999 left leg radiculopathy was diagnosed; that the self-insured did not approve an MRI, but he had an MRI that was paid for by his wife's insurance company; and that he was taken off work on February 15, 2000, and has not worked since that date. The claimant said that he was involved in an altercation with a student in September 1998, that he sustained a low back strain, that he fully recovered from that injury, and that he did not tell any doctors he saw for the _____ injury about the _____ injury. He agreed that for reasons unrelated to the injury he was reassigned to a print shop effective November 30, 1999, and that in December 1999 he submitted a letter of resignation with his resignation effective May 25, 2000.

A report of an MRI dated March 17, 2000, indicates mild or mild to moderate disc bulges from L1-2 through L5-S1. In several letters Dr. DP explained that he now normally treats hands, that he treated the claimant's ankle and did not place proper attention on other complaints, that he referred the claimant to a spine specialist, and that wearing a cast and walking differently puts strains on muscles proximally. Dr. M, a spinal surgeon, opined that the claimant's low back condition is related to the _____ injury and that from the history given by the claimant and reviewing records the radiculopathy and sciatic pain could have resulted from the accident in _____ or the limping and antalgic gait. At the

request of the self-insured, Dr. BP reviewed the medical records and examined the claimant. In a letter dated April 7, 2000, Dr. BP stated possible causes for the claimant's low back condition and concluded that it is not possible from a medical standpoint to prove that there was or was not a relationship to the _____ injury.

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. 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). That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn factual determinations of a hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. The hearing officer's determinations 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:

Alan C. Ernst
Appeals Judge

Thomas A. Knapp
Appeals Judge