

APPEAL NO. 001375

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 24, 2000. The hearing officer determined that the respondent (claimant) injured his back and neck in the course and scope of his employment on _____; and that he had disability on January 27 and 28, 2000, and from February 1, 2000, continuing through the date of the CCH. The appellant (carrier) appealed, stated evidence favorable to its position, urged that the determinations of the hearing officer are against the overwhelming weight of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor. 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 Decision and Order of the hearing officer contains a statement of the evidence. The claimant was an employee of an employee leasing firm and performed work for a painting company. He testified, called his wife and mother-in-law as witnesses, and had statements of an employee and a former employee of the painting company introduced into evidence. The owner of the painting company, its office manager, and the claimant's supervisor at the painting company were called as witnesses by the carrier. Medical records indicate that the claimant had a prior back injury and had a fusion because of the prior injury. In February 2000, a doctor diagnosed aggravation of a lumbar condition and a lumbar and a cervical strain/sprain, prescribed therapy and medication, and requested an MRI. The claimant contended that on Friday, _____, he injured his back lifting at work; that he was working alone when he was injured; that he reported the injury to his supervisor the day it happened; that he rested during the weekend, hoping he would get better; that the week after he was injured, he worked in pain three days and missed work two days; that he was terminated the following Monday; and that he could not work after he was terminated. The carrier contended that the claimant was not injured at work and that he did not report an injury until after he was terminated.

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 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. 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). 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 commented on some of the discrepancies in the evidence and found the evidence submitted by the claimant to be more credible. Only were we to conclude, which we do not in this case, that the hearing officer's determinations that the claimant was injured in the course and scope of his employment on _____, and that he had disability on January 27 and 28, 2000, and from February 1, 2000, continuing through the date of the CCH are so against the great weight and preponderance of the evidence as to be clearly wrong or 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 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:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge