APPEAL NO. 001423

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 25, 2000. With regard to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____ (all dates are 1999 unless otherwise stated), and that he did not have disability. The claimant appealed, contending that certain of the hearing officer's findings were factually incorrect. The claimant, for the first time on appeal, alleges that his "witnesses were not allowed to testify at the hearing." The claimant contends that he sustained an injury and has had disability. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was apparently employed as a maintenance mechanic and was standing on a platform beside a large tank, changing a light bulb, when the light fixture globe full of water fell, hitting the claimant on the back of his hard hat, neck, or shoulders, then falling to the platform before falling to the ground and breaking. How high the platform was off the ground (with estimates of anywhere from 20 to 200 feet) was in dispute. Of greater importance was how much the water-filled globe weighed and how far it fell. The claimant, at the CCH, testified that the globe probably weighed 8 to 12 pounds; however, the claimant told the doctors it weighed 30 pounds. The employer's safety officers testified that they had weighed a similar globe full of water and it weighed just over two pounds. The safety officers also testified that the light fixture is eight feet above the platform. The claimant testified that he is 5'9" tall. The carrier points out that even if the claimant was bent over, as he testified, the globe would have fallen less than four feet when it hit the claimant. It is undisputed that the globe was glass and did not break when it hit the claimant and the platform but only broke when it hit the ground below. There is also a dispute regarding the claimant's demeanor when one of the safety officers took the claimant to the doctor, to the hospital for tests, back to the doctor, and then dropped the claimant off at a car wash at the claimant's request. The claimant testified that he was in severe pain; the safety officers said that he was moving very well until he saw the doctor and then began faking pain.

The claimant was first seen by Dr. G, who, in a report of October 20, noted complaints of pain in the neck and lumbar areas, but no muscle spasm or objective signs of injury were noted. Dr. G's diagnosis was myositis and tendovitis. X-rays were negative. Dr. G took the claimant off work for two days due to shoulder pain and then released him to work without restrictions on October 22. The claimant next began treating with Dr. O, who recited a history of the claimant working 200 feet in the air and being hit by a 30-pound light fixture. Dr. O diagnosed thoracic and lumbar sprain/strain and left knee and left shoulder pain. Dr. O initially took the claimant off work for two weeks and then extended

it two more weeks. Radiological tests were essentially negative for the thoracic and lumbar spine (the lumbar study showed a "6 mm retrolisthesis of L5 over S1"). Dr. O eventually released the claimant from care and, on the referral of his attorney, the claimant began seeing Dr. C. Dr. C, in a report dated April 10, 2000, said he began treating the claimant on February 1, 2000, and that the claimant complained of neck and back pain (and other ailments). Dr. C diagnosed lumbar disc displacement, lumbar disc syndrome, and cervical sprain/strain and began treating the claimant with therapy. Dr. C recites a history of the claimant being hit in the lower back by a 30-pound light fixture that fell from a height of eight feet.

The hearing officer makes 36 findings of fact, including that Dr. C's diagnosis is not supported by objective medical evidence and is not based on "a credible, accurate history by Claimant." The hearing officer found that the claimant had not sustained a compensable injury and did not have disability. The claimant takes issue with the hearing officer's findings on the size of the light bulb fixture (not the globe) and the weight of the globe ("weighs more than 2 pounds"), and asserts that Dr. G was not a back specialist and that Dr. C's diagnosis "is much more precise than [Dr. G's]." Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). There were obvious conflicts in some of the details and also whether the claimant sustained an injury. The carrier does not dispute that the globe fell and struck the claimant on his hard hat, then hit the platform and eventually broke when it hit the ground. Whether that incident caused a cervical and low back injury was a factual determination for the hearing officer to resolve. She did so by finding that the claimant had not sustained an injury and that determination is supported by the evidence.

The claimant for the first time on appeal alleges that certain unidentified "witnesses were not allowed to testify at the hearing." Our review of the record does not disclose that the claimant requested any witnesses to testify or that the hearing officer refused to allow those witnesses to testify.

In that we are affirming the hearing officer's decision that the claimant did not sustain a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are 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). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge