APPEAL NO. 001425

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 23, 2000. The hearing officer determined that the appellant (claimant) did not sustain an injury in the course and scope of her employment on _____; and that since the claimant did not sustain a compensable injury, she did not have disability. The claimant appealed, urged that the determinations of the hearing officer are against the great weight and preponderance of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that she sustained a compensable injury on _____, and that she had disability beginning January 21, 2000, and continuing through the date of the CCH. The respondent (carrier) replied, 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. Only a brief summary of the evidence will be included in this decision. It is undisputed that an incident occurred at work on _____. The claimant, who was employed as an aide in a residential treatment facility, testified that two residents had been fighting, that she grabbed one of the residents from behind, that he fell back into her, and that she hit her mid-neck on a bulletin board on a wall. She stated that she immediately felt burning in her neck after the incident, that her condition gradually became worse, and that she continued to work her normal shifts until January 11, 2000, when she could no longer do her work.

A licensed vocational nurse testified that on _____, two residents were fighting; that they were separated; that it took four female employees to restrain one of them; that the claimant was behind the person, helping restrain him; that the claimant was pushed against the wall; that she was not thrown against the wall; that she examined the claimant and made no significant findings; that she did not recall the claimant later complaining about her neck; and that later she did not see anything that suggested an injury. A registered nurse testified that she did not see the incident; that after the date of the incident, the claimant worked her regular shifts and requested that she be permitted to work additional hours; that she did not recall the claimant complaining about her neck or requesting to go to a doctor; and that she did not observe the claimant having a problem. The human resources manager testified that on January 11, 2000, the claimant called and indicated that she had an injury a couple of months back. She said that the claimant was not terminated and that the claimant just stopped showing up for her shifts.

A chiropractor diagnosed a cervical sprain/strain and prescribed therapy. A report of an MRI of the cervical spine dated February 21, 2000, indicates the beginning of slight loss of normal intensity of the second, third, fourth, and fifth discs and a one to two mm shallow posterocentrally bulged disc minimally indenting upon the thecal sac at C4-5.

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 evidence. 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 judgment 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). The determination of the hearing officer that the claimant did not sustain an injury in the course and scope of her employment is 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support that determination of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id*. Since we have found the evidence to be sufficient to support the determination that the claimant did not sustain a compensable injury, the claimant cannot have disability.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge