APPEAL NO. 001429

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 respondent (claimant) sustained an injury in the course and scope of her employment on _____, and that she had disability from March 9, 2000, to the date of the CCH. The appellant (carrier) appealed, urged that the determinations of the hearing officer are against the great weight of the evidence, and requested that the decision of the hearing officer be reversed and a decision in its favor be rendered. 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 claimant contended that she was injured when an automobile starter fell on her. She testified that she worked in an automobile parts store; that the store was short of employees and items needed to be placed on shelves; that on _____, she took a starter from a basket to place it on a top shelf; that the starter fell, striking her on her right wrist, right shoulder, and neck; that she fell to the floor in a sitting position; that she called Mr. R, the other employee in the store at the time; that Mr. R did not come to where she was; that she went to where he was, was crying, and vomited; that he told her to go to an emergency room (ER); that she called her roommate; that her roommate took her to an ER; that she was taken off work for a few days; that the next day she went to a chiropractor recommended by her roommate; that the chiropractor took her off work and has not released her to return to work; and that she could not return to work because of the injury. The testimony of the roommate is consistent with that of the claimant.

The carrier contended that the claimant staged the unwitnessed incident and that she was not injured in the course and scope of her employment. Mr. R said that he heard the claimant call; that he did not hear noise that sounded like something fell; that she was crying, but he did not see her vomit or smell vomit; that he saw the box on the floor; that the box did not appear to be damaged; that he placed it on the shelf; that he told her to go to an ER; and that she had someone pick her up. The store manager testified that he was out of town the day of the incident; that store records did not indicate any activity with that particular part number the last quarter of 1999 or in the first quarter of 2000; that it is possible, but not likely, that the starter was shown to a customer, was not purchased, and needed to be returned to a shelf; that Mr. G left him a note with the part number; that he inspected the package and the starter; and that there was no damage to either of them.

A report from the ER indicates that the claimant was not sure where the starter struck her; that she complained of pain in lower back, right wrist, right knee, right shoulder, and neck; that an x-ray of the cervical spine showed some mild straightening of the lordotic curvature of the upper cervical spine; that this could be due to muscle spasm; that the

diagnosis was acute myofascial cervical strain; and that medication was prescribed. On March 9, 2000, the chiropractor diagnosed right shoulder impingement syndrome, right shoulder rotator cuff syndrome, cervicothoracic sprain/strain, lumbar facet syndrome, and paresthesia of the middle finger on the right hand and took the claimant off work. The chiropractor has not returned the claimant to work.

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, 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. 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 determinations of the hearing officer 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 his. 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:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge