APPEAL NO. 001523

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 June 9, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; and that the claimant had disability beginning on March 6, 2000, and continuing through the date of the CCH. The appellant (carrier) appealed, urging that the hearing officer's decision that the claimant sustained a compensable injury and had disability is against the great weight and preponderance of the evidence. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified he worked as a machine operator for the employer and that on _____, while attempting to unload and change a metal die weighing between 60 and 70 pounds, he felt a "pull" or "rip" in his neck and upper back around his shoulders. The event occurred while his partner, Mr. J, was on break and was unwitnessed by anyone at the work-site. The claimant offered the recorded statement of Mr. J, who stated that the claimant told him that he had hurt his neck. He noticed that the claimant had trouble moving his neck. The claimant testified that he continued working for about 15 more minutes, but was unable to continue and reported the injury to his supervisor who took him to the emergency room at the local hospital. The claimant stated he was told that he had pulled something or had muscle spasms then treated and released to go home and placed on light duty for two days. No medical records from the hospital were offered by either party. The claimant testified that his supervisor drove him back to work where he picked up his car and drove himself home that night.

The claimant, on January 27, 2000, sought treatment with Dr. L, who diagnosed spinal misalignment and dysfunction of C6 and T2. All other bone structures and soft tissue were found to be unremarkable. Dr. L released the claimant to light-duty work with instructions as to no repetitive movement or looking down, and that he should be able to work at a position which allowed him to change positions frequently. Chiropractic therapy was prescribed for a period of two weeks. The claimant was offered light-duty work by the employer pursuant to the restrictions of Dr. L and he assumed duties requiring the use of a sander. The claimant complained to Dr. L that the work aggravated his injury so he was transferred by the employer to a desk job doing "paperwork" which the claimant testified also hurt his neck because he had to look down to do the work. Dr. L referred the claimant to Dr. R for pain management.

The claimant testified that he could not do the work assigned to him by the employer and changed treating doctors on March 6, 2000, to Dr. O because he felt Dr. L was unprofessional. The claimant explained Dr. L was unprofessional because he told the claimant to get himself another doctor. A medical record from Dr. L's office dated February

12, 2000, reflects that the claimant told Dr. L that he was changing doctors and no longer wished to use his services. Another record reflects that the claimant returned to Dr. L on February 17, 2000, seeking to reinstate Dr. L as his treating doctor.

Prior to changing treating doctors, the claimant presented to Dr. R on February 4, 2000, with complaints of neck pain radiating to his left arm. Dr. R noted that Dr. L had scheduled the claimant for an MRI on February 8, 2000. Dr. R diagnosed cervical and thoracic neuritis with radiculopathy to the left upper extremity and issued the claimant a release from all work activity. The next day, on February 5, 2000, the claimant presented to Dr. O. Conservative chiropractic modalities were ordered three times a week.

A cervical MRI report dated February 8, 2000, from Dr. M indicates that the claimant has a mild 2mm disc bulge at C6-7 with the disc material mildly effacing the anterior surface of the thecal sac without causing canal or neuroforaminal stenosis.

A record from March 2, 2000, reflects that the claimant gave a history to Dr. O that he had been off work since his accident on _____. The claimant testified that he continued to work at the light-duty job assigned to him by the employer to process paperwork until March 6, 2000, when he felt he could no longer do the job because it required him to look down and this activity hurt his neck. The claimant testified he filed his request to change treating doctors with the Texas Workers' Compensation Commission on March 6, 2000, and has not returned to work as of the date of the CCH. The claimant stated that Dr. O has not released him back to work and he did not believe that he could return to work until he was 100% better, had received all his medical treatment including some trigger point injections ordered by Dr. R and had repeat tests done to ensure that he had recovered.

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. 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).

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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly 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 his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994. We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge