APPEAL NO. 001544

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 7, 2000. The record was closed on June 13, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury and did not have disability. The claimant appealed these adverse determinations on sufficiency grounds. The respondent (carrier) replied that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

Affirmed.

The hearing officer's decision sets forth fairly and adequately the evidence in this case and it will only be outlined here. Briefly, the claimant testified that he worked on _____, as a senior set-up crew member for the employer, a mobile home sales company. He explained that his five-member crew had moved a mobile home to the new owner's location and they were attempting to lower the trailer onto its base when the load shifted and the trailer fell about four feet at one end, ultimately pinning one member under the frame of the home and hitting the claimant on the right side of his lower back around his waist, knocking him down. The coworker was rescued with the claimant's assistance and transported to the hospital. The claimant testified that a third person, another co-employee, was hit by the trailer when it shifted.

The claimant testified that he immediately told all of his coworkers, and then his supervisor when he arrived on the scene, that he had been hit by the trailer when it shifted. He acknowledged that he did not ask for assistance from the emergency assistance crew when they arrived to assist the other man. The claimant testified that the next day, a Saturday, he felt sore and when he returned to work on Monday, he asked his supervisor to send him to a doctor. The claimant stated he discussed the accident with his supervisor and instead of being sent to the doctor, he was fired. The claimant sought medical treatment the same day with Dr. C and asserted that he could not work from February 21, 2000, to the date of the CCH on June 7, 2000, because he had a "pressed" nerve in his back which had him "all messed up" causing him pain and preventing him from sitting for long periods of time. He testified that the doctors took him off work.

Evidence to the contrary was elicited from the claimant's coworkers and his supervisor, whose testimony rebutted the claimant's statements that another coworker was hit by the trailer and that the claimant told his supervisor on _____, that he had been hit by the trailer. The supervisor testified that the claimant did not assert an injury until after he was fired because of failure to adhere to proper procedures in setting up the mobile home while he was on probation for other matters. He also testified that when he asked whether anyone else was injured, the four other men, including the claimant, told him they were alright.

Medical records from Dr. M dated February 21, 2000, reflect that the claimant presented with complaints of low back pain and right leg pain and was injured "while bending over a mobile home fell on his low back." The claimant was scheduled for physical therapy and trigger point injections to resolve the pain. X-rays were negative for any fracture but muscle spasms were documented along with decreased lumbar range of motion and an antalgic gait on the right side. Diagnostic codes for 1) intervertebral disc syndrome, 2) nerve root compression, and 3) low back sprain were entered in the records. EMG/nerve conduction studies were offered by the claimant without any interpretation or explanation from a doctor. No bruises or abrasions were documented in the record of this first visit.

The claimant was subsequently examined by Dr. S at the same medical clinic where Dr. M worked, on March 16, 2000. The claimant gave a history to Dr. S of being hit by a wooden beam while attempting to set up a trailer home. An MRI was ordered because of the claimant's continued complaints of pain. Physical therapy was continued. Subsequent medical reports reflect the same history of being hit by a wooden beam while attempting to set up the mobile home and that the claimant was continuing to have low back pain with radiation to the lower extremity with numbness and tingling. An "absence from work" slip was signed by one of the doctors on April 26, 2000, releasing the claimant from work until an undetermined date and again on May 10, 2000, until an undetermined date.

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:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge