APPEAL NO. 001565

This appeal is brought 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 12, 2000. It is undisputed that the appellant (claimant) sustained a compensable injury on _____. The hearing officer determined that the claimant did not have disability from June 14, 1997, through June 19, 1999. The claimant appealed, urged that that determination is so contrary to the overwhelming weight and preponderance of the evidence as to be manifestly unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in her favor. The respondent (self-insured) 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 claimant testified that she worked as a system manager for the self-insured and that she was required to take merchandise out of boxes, put prices on merchandise, and place it on shelves and that she had to lift up to 20 or 30 pounds. She said that on Friday, _____, she was riding in a motor vehicle; that the vehicle was struck from the rear; that she injured her low back and neck; that she got worse over the weekend and called Dr. F, her family doctor, on Monday; that Dr. F called a prescription to a pharmacy; that she did not get better and went to Dr. F; that Dr. F placed her on light duty; that she worked in pain until June 14, 1997, when she could no longer work; and that Dr. F took her off work on that day. She testified that after June 1997 she went downhill, that she got worse and worse, that she fell several times, that Dr. F would not treat a workers' compensation patient, that she heard about Dr. PS and went to him, and that in September or October 1997 Dr. PS ordered a walker for her. The claimant stated that she is able to do very little at home, that she lies down about 50% to 75% of the time, that she takes a large amount of medication, and that she was not able to work since June 14, 1997. Ms. CS testified that she is a friend of the claimant, that she has visited the claimant in her home, and that she has taken her to doctors. Ms. CS's testimony concerning the claimant's condition and activities is consistent with that of the claimant.

The self-insured introduced into evidence a videotape of the claimant showing some of her activities in late June 1997. She was able to walk, enter and exit a motor vehicle, and drive displaying only limited abnormal movement. At the CCH, she used a walker. Both parties introduced medical records. In disability certificates dated June 14 and 18, 1997, Dr. F took the claimant off work from June 14, 1997, through July 7, 1997. In a letter dated July 3, 1997, Dr. PS said that he felt that the claimant should not return to work until her injuries stabilized and showed some improvement. A report of an MRI of the lumbar spine dated November 7, 1997, showed degenerative disc disease from T10 to S1. An August 1998 report from Dr. PS indicates that he still had the claimant off work.

Dr. M performed an independent medical examination of the claimant and on October 17, 1997, stated that he saw no physical reason why she should be unable to return to her preinjury work and reported that she had reached maximum medical improvement (MMI) on that day with a zero percent impairment rating (IR). Dr. CLS examined medical records of the claimant and reported that the claimant's subjective complaints are not documented; that objective findings have not been documented; that the claimant presents with symptoms but with no apparent pathology; that this is somatization which is a use of physical symptoms as a means of dealing with and communicating about emotional issues; and that she, Dr. CLS, recommended stopping treatment and medications. Dr. B examined the claimant at the request of the carrier. In a report dated December 22, 1998, Dr. B reported that an attempted functional capacity evaluation was invalidated and the claimant appeared to have a severe underlying mental and behavioral problem with extensive somatization which should be evaluated and treated by a psychiatrist. In a Report of Medical Evaluation (TWCC-69) dated August 11, 1999, and an attached narrative Dr. B reported that the claimant reached MMI on that day with a 13% IR, consisting of 5% related to lumbar degenerative disc disease and 8% for disruptive social functioning.

The burden is on the claimant to prove by a preponderance of the evidence that she had disability. Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993. 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 a claim, 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 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 his Decision and Order, the hearing officer stated that the claimant was neither persuasive nor credible that she had disability. 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 determination of the hearing officer that the claimant did not have disability from June 14, 1997, through June 19, 1999, is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and is affirmed. 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).

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge