

APPEAL NO. 001631

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 19, 2000. The hearing officer determined that the appellant (claimant) did not suffer a compensable right inguinal hernia on _____, and that the claimant did not have disability. The claimant appealed the adverse determinations on the grounds of sufficiency of the evidence and also argued that the hearing officer erred in admitting Carrier's [respondent] Exhibit No. 1 because it was not relevant to the issues to be determined at the CCH. The carrier responded that the evidence was sufficient to affirm the hearing officer's decision and order and that the hearing officer did not err in admitting Carrier's Exhibit No. 1.

DECISION

Affirmed.

We address the claimant's contention that the hearing officer erred in admitting Carrier's Exhibit No. 1 over his objection as to relevancy. We review the admission and/or exclusion of evidence on an abuse of discretion standard. To obtain a reversal of a decision based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was, in fact, an abuse of discretion, and then show that the error was reasonably calculated to cause, and probably did cause, the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 980639, decided May 14, 1998; see *also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). We cannot agree that the hearing officer committed reversible error in admitting the exhibit. The hearing officer found the document relevant to the claimant's history of having prior hernias, one in 1980 and a bilateral inguinal hernia in 1990. It was for the hearing officer to place the weight and credibility of the document.

The claimant testified that he and another coworker were lifting and carrying a 45-foot pipe when he slipped and felt pain in both sides of his groin. The claimant testified that he was examined by Dr. K who diagnosed a left inguinal hernia for which he ultimately underwent surgery on June 4, 1999. Claimant was also examined by Dr. H, Dr. Sa, and Dr. R for complaints of right-sided groin pain. None of these doctors were able to palpate or find a right-sided hernia. After his surgery, the claimant returned to work at light duty.

The claimant was examined by Dr. Si on September 9, 1999, who opined that the claimant had a right-sided hernia and released the claimant to light-duty work. The claimant continued to work at light duty until the construction project was completed on September 23, 1999, when he, along with the other project staff, was laid off. The claimant contended that he could not work after September 23, 1999, and asserted disability to the date of the CCH.

Medical records from Dr. R and Dr. H reflect they treated the claimant for right epididymitis and prostatitis, and after multiple examinations could not find a right inguinal hernia. Letters from Dr. Si reflect that the claimant only presented for right inguinal pain and poor urinary flow on September 9, 1999, for which he diagnosed a small right inguinal hernia and there were no left inguinal complaints.

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.* The hearing officer found that the claimant did not sustain his burden of proving that he either sustained a right inguinal hernia in an incident at work on _____, or that the claimant’s right inguinal hernia is not a result naturally flowing from the left inguinal injury incurred on _____. The hearing officer found that the cause of the claimant’s light duty from _____, to September 22, 1999, was his left inguinal hernia which did not cause him to be unable to obtain and retain employment from September 23, 1999, until June 19, 2000, at wages he earned before _____, and thus because the right inguinal hernia was found to be noncompensable, the claimant did not have disability.

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. 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 determinations that the claimant did not sustain a right inguinal hernia on _____, and that the left inguinal hernia and its repair did not cause the claimant to have disability from September 23, 1999, until the date of the hearing on June 19, 2000.

Kathleen C. Decker
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge