APPEAL NO. 001645

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 29, 2000. The hearing officer determined that the appellant's (claimant) injury, sustained on _____, did not extend to include a right tarsal tunnel and right plantar fascitis and that the claimant did not have disability from February 7, 2000, through February 21, 2000, resulting from the _____, injury. The claimant appealed the adverse determinations, urging that the decision was so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. The respondent (self-insured) filed a response, contending that the evidence was sufficient to support the hearing officer's decision and order and that it should be affirmed.

DECISION

Affirmed.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary of the evidence pertaining to the appealed findings of fact and conclusions of law will be included in this decision. The claimant testified that a laser printer fell on her right foot on _____, and she was transported to the local hospital emergency room for medical care where she was evaluated and placed into a cast. The parties stipulated that the claimant sustained a compensable right foot contusion on _____.

The claimant was subsequently seen by Dr. H, who placed her in a boot and into therapy. The claimant changed doctors to Dr. P, who diagnosed tarsal tunnel syndrome and prescribed various forms of conservative treatment. Dr. P opined that an MRI and EMG/nerve conduction studies demonstrated compression of the plantar nerve at the ankle and recommended surgery.

The claimant underwent an EMG/nerve conduction study on August 27, 1999, which was interpreted by Dr. A. He wrote that there was "no electrodiagnostic evidence for a right lower extremity neuropathic process at this time." The claimant underwent an additional EMG/nerve conduction study on September 23, 1999, by Dr. G, who wrote that right tarsal tunnel syndrome was likely but there was no evidence of radiculopathy. An MRI of the right foot was performed on February 21, 2000, which was interpreted by Dr. F, who wrote that the claimant had bone marrow edema in the proximal talus close to the subtalar joint, which probably represented a bone bruise. There was no fracture line delineated. The claimant had mildly increased subtalar joint fluid, probably related to a previous trauma, and nonspecific edema within the plantar musculature. The claimant was examined by Dr. S on March 20, 2000, who disagreed with the diagnosis of tarsal tunnel syndrome.

By report dated March 21, 2000, Dr. P noted that the claimant had continued complaints of foot pain and lack of strength in her foot. Dr. P continued his diagnosis of plantar fascitis and tarsal tunnel syndrome. By letter dated March 24, 2000, Dr. P wrote that the claimant was unable to work from February 8, 2000, to February 21, 2000, secondary to having severe pain and discomfort due to her foot condition. The claimant testified that she could not work during this time period due to pain and swelling in her right foot.

Dr. M performed a peer review on April 28, 2000; after reviewing the EMG/nerve conduction study of September 23, 1999, he wrote that since the claimant had a normal right tibial motor latency, tarsal tunnel syndrome was not likely.

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 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 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).

The hearing officer found that the claimant failed to present sufficient medical evidence to establish a causal relationship between Dr. P's diagnoses of tarsal tunnel syndrome and right plantar fascitis and her compensable right foot contusion of _____, because Dr. P failed to explain how the objective test results related to the diagnoses or the _____, injury. The hearing officer also found that the claimant did not sustain disability from February 7, 2000, through February 21, 2000, as a result of her compensable injury of _____. "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*. In this case, the hearing officer obviously believed and found that the claimant had only sustained a minor contusion to her right foot on _____, which had resolved and was not the cause of her inability to work from February 7, 2000, through February 21, 2000.

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). With the medical evidence in conflict and subject to varying inferences, we find the evidence sufficient to support the determinations of the hearing officer. We will not substitute our judgment for hers. 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 W. Potts
Appeals Judge