APPEAL NO. 001705

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 January 12 and April 5, 2000. The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 000942, decided June 7, 2000, reversed the decision of the hearing officer and remanded for her to admit medical reports and records that were offered into evidence by the appellant (claimant) but not admitted; to consider all of the evidence; to make findings of facts and conclusions of law that resolve the disputed issues; and to render a decision and order based upon those findings and conclusions. A CCH on remand was held on June 29, 2000. The hearing officer determined that the claimant did not sustain an injury in the course and scope of his employment on _____, and that he did not have disability. The claimant appealed, contended that the hearing officer erred in admitting a report from Dr. P offered by the respondent (carrier) at the hearing on remand; urged that the hearing officer committed judicial error and abused her discretion in not finding for him; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The carrier responded; contended that the hearing officer did not err in admitting the report of Dr. P and that if it was error to admit the report, the error was harmless; urged that the determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust; and requested that the decision of the hearing officer be affirmed.

DECISION

We affirm.

We first address the contention that the hearing officer erred in admitting the report of Dr. P. After the hearing officer admitted the reports and records that she did not admit at the prior session of the CCH held on April 5, 2000; the attorney representing the carrier offered the report of Dr. P. He stated that the report of Dr. P is dated April 3, 2000; that it was sent by facsimile to the attorney representing the claimant on April 4, 2000; and that on April 5, 2000, he was prepared to offer into evidence the report of Dr. P, but did not do so because the hearing officer did not admit into evidence the reports and records it would rebut. In Texas Workers' Compensation Commission Appeal No. 000120, decided March 6, 2000, the Appeals Panel stated that a party to a CCH must be appraised of the evidence contrary to its position so that it may refute, test, and explain the evidence; held that it was error for the hearing officer not to admit a report from a doctor offered by the carrier; cited Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ); stated that error in admitting or excluding evidence results in reversible error if the error was reasonably calculated to and probably did cause the rendition of an improper decision; and did not find reversible error. The hearing officer did not commit error in admitting the report of Dr. P. In his appeal, the claimant stated that the report of Dr. P is not mentioned in the statement of the evidence or discussion in the Decision and Order of the hearing officer and that some of the report of Dr. P supports his position. If it had been error for the hearing officer to have admitted the report of Dr. P, it would not have resulted in reversible error.

The Decision and Order of the hearing officer contains a thorough statement of the evidence and a thorough discussion in which she states some of the evidence and comments on the evidence. Only a brief summary of the evidence will be included in this decision. Both parties had exhibits admitted into evidence. The claimant testified. The carrier called the owner and president of the employer, the vice-president for human resources, the manager who managed five stores for the employer, and a store manager who supervised the claimant. The claimant testified that he injured his back lifting a heavy compressor on _____; that when he returned to the store, he told his supervisor about the injury; that he completed his shift that day; that the next day after he made the deliveries, he was fired; and that he had received warnings before he was fired. He said that he went to Dr. G on September 23, 1999, and told him what had happened and that Dr. G treated him about ten times. The claimant's supervisor and the manager of the five stores testified that they counseled the claimant concerning his job performance and that the claimant did not tell them that he was hurt at work. The vice-president and president testified about the claimant's job performance and disciplinary problems.

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 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. 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). In her Decision and Order, the hearing officer stated that she did not find the claimant's testimony that he was injured lifting at work and that he reported the injury to the employer the day that it occurred to be credible and that she found the testimony of the witnesses called by the carrier to be credible. The determinations of the hearing officer that the claimant was not injured in the course and scope of his employment on _____, and that he did not have disability are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. 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 hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Robert W. Potts
Appeals Judge