

APPEAL NO. 001730

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 July 3, 2000. With regard to the issues before her, the hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____ (all dates are 1999 unless otherwise noted), and that the claimant did not have disability.

The claimant appeals, contending that the hearing officer failed to properly review "the totality of the evidence." The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a housekeeper by a custodial company (employer) and was assigned to work at a medical center where she was assigned to clean a portion of the emergency room. The claimant testified that she had been "having pain in my hands and the tingling in my back" prior to _____; that the evening of _____ was a particularly busy night; that there was blood on the floor and in receptacles; and that during the evening her pain became more severe while she was cleaning up the blood. There was conflicting testimony regarding the weight of the buckets used, how they were filled, and whether the claimant followed the recommended procedures. The hearing officer, in the Statement of the Evidence, recites some of the testimony. The carrier points out that the claimant's testimony is inconsistent with a transcribed statement she gave and some interrogatories. The claimant eventually sought treatment with Dr. G.

Dr. G apparently first saw the claimant on November 5, and on an Initial Medical Report (TWCC-61) of that day recites that the claimant felt "pain and tingling" while mopping on _____. Dr. G diagnosed cervical, lumbar, and wrist sprain/strain, took the claimant off work, and began chiropractic treatment. In a report dated May 18, 2000, Dr. G writes:

Based on an assessment of [the claimant's] history, along with her subjective complaints, objective findings, radiographic analyses, and other test results, it is evident from a standpoint of medical certainty, that her current condition did result from the type of injury/onset described in this report. She reported suffering varying degrees of losses of functional capacity

The claimant was also examined by Dr. PG, who in a report dated March 28, 2000, noted "some mild neck pain which is attributable to her C5-6 level spondylosis," and recommended an MRI for the claimant's back and EMG testing for probable bilateral carpal tunnel syndrome.

The hearing officer, in the Statement of the Evidence, commented that she did not find the claimant's testimony "to be convincing" and further commented:

Whatever physical problems the Claimant currently is experiencing in her hands and back are not caused by or the result of her performance of her assigned duties as a custodian/housekeeper for the Employer working at [medical center] on _____.

As noted, the evidence was in conflict. The claimant, in her appeal, states that she believes the hearing officer did not properly review the totality of the evidence. Our review of the record indicates only that the hearing officer did not find the claimant's version "convincing." 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 hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

In that we are affirming the hearing officer's decision that the claimant did not sustain a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Robert W. Potts
Appeals Judge