APPEAL NO. 001732

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 7, 2000. The hearing officer determined that the respondent (claimant) sustained an injury to his low back in addition to his right knee and ankle on _____; and that the claimant had disability from March 15, 2000, to July 6, 2000. The appellant (carrier) appealed, asserting that the hearing officer did not have jurisdiction to find that claimant's injury extended to his right leg and back and that the great weight and preponderance of the evidence was contrary to the hearing officer's finding that claimant sustained an injury to his low back in addition to injuries to his right knee and ankle. The appeals file does not contain a response from the claimant.

DECISION

Finding the evidence sufficient to support the decision of the hearing officer, we affirm the decision as reformed.

It is uncontested that the claimant sustained a compensable injury on _____. The carrier accepted an injury to the claimant's right knee and right ankle, but contested that the injury extended to the low back. The issue reported out of the benefit review conference was "[d]id the claimant sustain an injury to his low back in addition to his right knee and ankle on _____?"

The claimant testified that he worked for Manpower, Inc. (the employer) on _____, and was injured when he stepped on a pallet, the pallet broke, and he fell backwards, injuring his right leg, lower hip, and ankle. When asked by the ombudsman if he had also injured his back, the claimant testified that he had. The claimant reported an injury to his immediate supervisor and to his supervisor with the employer, Ms. C. He testified that Ms. C then sent him to a doctor, but did not send him to the emergency room. Ms. C testified that after she spoke with the claimant, she sent him for a drug screen in compliance with the employer's policy.

On March 15, 2000, the claimant went to see Dr. S. In the history taken that day, Dr. S wrote that the claimant was working at (the company) packing materials, that he stepped on a pallet with a box in hand that contained four gallons of fluid weighing approximately 30 to 40 pounds, and that the pallet broke when the claimant stepped on it, and the claimant fell backwards. Dr. S noted that the claimant stated that he hit his back and twisted his right leg. The claimant complained of pain in his right leg, back, and right foot. Dr. S did range of motion measurements and noted reduced flexion and extension, with pain, and reduced right and left lateral flexion and extension with pain. In a letter dated May 5, 2000, Dr. S advised the ombudsman assisting the claimant that the diagnosis of the claimant's problems was lumbar sprain, hip sprain, sprain of the knee or leg, and muscle spasms.

The carrier offered evidence that the claimant did not complain of back pain when he first reported the injury to his immediate supervisor and then to the employer. The carrier argues that the great weight of the credible evidence does not support a finding that the claimant injured his low back in the accident of _____, and requests a reversal of the hearing officer's factual determination on that point.

On the issue of disability, the claimant testified that he had not worked or had any earnings from the date of the injury until the day of the hearing. He testified at the hearing that he was ready to go back to work. While the claimant alternately testified that he was either able to return to work on the date of the hearing or would be ready to return to work within a few weeks, he finally acknowledged that he had gone back to the employer and was ready, as of the date of the hearing, to go back to work. In his letter to the ombudsman, Dr. S stated that the claimant had been off work from March 15, 2000, through the date of the letter and that Dr. S would try to return the claimant to light duty after the claimant was evaluated by an orthopedic doctor, an evaluation which had not taken place as of the date of the letter.

The carrier offered the testimony of two police officers that were familiar with the claimant and had seen the claimant run and jump while they pursued him on two separate occasions, once in April 2000 and again in May 2000, and the testimony of Ms. C that she had seen the claimant on several occasions around town since the date of injury and he had not appeared to have any physical limitations. The carrier argues that the testimony of the officers and the employer so outweighs the evidence found credible by the hearing officer that it mandates a finding that the claimant had no disability.

The evidence presented to the hearing officer had significant conflicts. 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, 244 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.

The carrier also asserts that the hearing officer does not have jurisdiction to make findings of fact on issues not in dispute. The carrier complains of the following findings of fact:

FINDINGS OF FACT

4. On _____, as Claimant was performing his job duties for Employer, he stepped on a pallet, a plank of the pallet broke, and Claimant fell to the ground, sustaining an injury to his right leg, hip, right ankle, and back.

5. Due to his _____ injury, Claimant has been unable to obtain and retain employment at his preinjury wage from March 15, 2000 to July 6, 2000.

The hearing officer then made the following conclusion of law:

CONCLUSION OF LAW

3. Claimant sustained an injury to his low back in addition to his right knee and ankle on _____.

While we have held in the past that it is error for a hearing officer to decide issues not before him which were neither certified as issues nor tried by consent, there is no similar prohibition against findings of fact which go beyond the scope necessary to determine the issues before the hearing officer. The carrier acknowledged a compensable injury to the claimant's right ankle and knee and the objectionable portion of Finding of Fact No. 4 stating that the claimant sustained an injury to the right leg and hip is unnecessary to determine the issue before the hearing officer and will be disregarded by us as surplusage. Conclusion of Law No. 3 is adequately supported by the remaining, unobjected to, portion of the finding of fact and Finding of Fact No. 4 is reformed to read:

On _____, as Claimant was performing his job duties for Employer, he stepped on a pallet, a plank of the pallet broke, and Claimant fell to the ground, sustaining an injury which includes his low back.

The decision and order of the hearing officer, being adequately supported by the evidence, is affirmed as reformed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge