APPEAL NO. 001756

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 July 13, 2000. The hearing officer determined that the compensable injury sustained on _____, does extend to include an injury to the low back and that the respondent (claimant) had disability from February 5, 2000, through the date of the CCH. The appellant (carrier) appealed, requesting that the hearing officer's findings that the claimant's injuries extend to her low back and that the claimant had disability be reversed because the evidence was insufficient to prove that the injury extended to the low back and that the claimant had any disability. The claimant responded, stating that the evidence was sufficient to support the findings of the hearing officer and requesting that we affirm.

DECISION

Affirmed.

The claimant was employed by (employer) as a cook for the (restaurant). The claimant testified that as she was preparing some chile rellenos her foot became stuck in a floor mat. When she turned around, she twisted and fell, injuring her right knee and back. The accident was witnessed by two coworkers and was reported to the claimant's supervisor. The claimant was sent home by one of the owners of the café. The claimant testified that she called in to work the following day because of swelling of the knee and pain, and that she has been unable to return to work as of the date of the hearing.

Several weeks after her fall, the claimant sought medical treatment with Dr. L. Dr. L's Initial Medical Report (TWCC-61) indicates that the doctor found positive crepitus of the right knee, diffuse tenderness to mild palpation of the lumbar spine, and a slight decrease in extension. X-rays taken of the lumbar spine revealed degenerative changes. X-rays taken of the right knee and shoulder were within normal limits. Dr. L diagnosed traumatic back and knee pain. The claimant testified that Dr. L asked if she was working; that she told him that she was not; and that he replied "Good." She continued to treat with Dr. L for awhile and then changed treating doctors to Dr. F, seeing him for the first time on March 27, 2000.

Dr. F's notes indicate that the claimant continued to complain of low back and right knee pain. Dr. F took the claimant off work. He has continued to recommend that the claimant not work through the date of his most recent visit with the claimant on July 3, 2000. Dr. F's most recent chart note in evidence, dated April 24, 2000, indicates that the claimant continued to complain of both low back and knee pain.

The carrier presented documentary evidence in the form of transcribed interviews of Ms. N and Ms. E. Ms. N was one of the claimant's coworkers present at the time of the claimant's fall. Ms. N, through an interpreter, told the carrier's adjuster that the claimant had not complained of any back pain when she fell, only pain in the knee. Ms. E told the

carrier that she had observed the claimant walking and pushing a child in a stroller over the bridge from (city 1), to (city 2) on March 6, 2000.

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. The hearing officer is also charged with determining the weight to be given to any particular piece of evidence. Section 410.165(a). 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). 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 judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The hearing officer evidently found the clinical observations of Dr. L and Dr. F that the claimant had a decrease in the range of motion to her back and objective signs of lumbar strain/sprain to be credible and relevant in determining that the claimant had sustained an injury to her low back at the time of her fall. The fact that the claimant did not complain of low back pain at the time of the accident does not constitute the great weight and preponderance of the evidence that no low back strain/sprain occurred. The hearing officer also evidently found the doctors' determinations that the claimant should be off work and should refrain from lifting and carrying heavy pots (the activities which the claimant testified that she engaged in at work) to be more persuasive on the issue of disability than testimony that the claimant could push a stroller and walk. The evidence found persuasive by the hearing officer is sufficient to support the findings of fact set forth in the decision and order and the findings of fact support the hearing officer's conclusions of law.

Finding sufficient evidence in the record to support the hearing officer's determination and no reversible error, we affirm the decision and order of the hearing officer.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Robert W. Potts
Appeals Judge