

APPEAL NO. 001857

This appeal is brought 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 19, 2000. The hearing officer determined that on _____, the respondent (claimant) injured her lower back in the course and scope of her employment and that she had disability from February 18, 2000, through the date of the hearing. The appellant (carrier) requested review, contended that there are inconsistencies in the evidence, urged that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant was not injured in the course and scope of her employment and did not have disability. The claimant responded, stated that at the hearing the carrier presented argument on inconsistencies in the evidence and that the hearing officer made a finding of fact that the claimant was a credible witness, urged that the evidence is sufficient to support the determinations of the hearing officer, and requested that her decision be affirmed.

DECISION

We affirm.

The claimant testified that she worked as a cashier for the employer and that the practice is for a cashier to lift items being purchased from a cart, enter the items into a cash register, and place the items into another cart. She said that on _____, she heard a popping in her low back as she lifted a case of bottled water or some other liquid; that at the time she did not think it was serious; that she was taken off using a cash register for about an hour to work at the exit door and at the entrance door; that she returned to the cash register; that her back pain became worse; that she did not tell Ms. S, her immediate supervisor, about the injury, but told Mr. B, the general manager, about the injury; and that she did not know the exact time of the incident and did not tell Mr. B the time the injury occurred, but told him that it happened about an hour earlier.

Ms. S testified that records indicate that the claimant told Mr. B about the injury at 6:05 p.m., that the claimant signed off the cash register at 5:35 p.m. and did not return to the cash register until 6:49 p.m., and that the information from the cash register the claimant used did not reflect that she completed a transaction involving bottled water at the time of the claimed injury. Ms. S also said that the claimant had the opportunity to report the claimed injury to her, but reported it to Mr. B. A handwritten statement from Mr. B dated _____, states that the claimant said that she transferred water from one cart to another and contains times that are consistent with those in the testimony of Ms. S. Medical records indicate that the claimant told two doctors that she was lifting a case of water.

A report of an MRI dated March 7, 2000, indicates that the claimant had mild to moderate disc bulges from L1 to S-1 and that there were no focal herniations, central canal stenosis, or remarkable foraminal narrowing. Records from the chiropractor who treated the claimant indicate that she received treatments for a lower back injury and that she was taken off work and not returned to work.

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 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 evidence. 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. In the statement of the evidence in her Decision and Order, the hearing officer stated that the claimant was a credible witness. 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). The hearing officer's determination that the claimant was injured in the course and scope of her employment on _____, is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and is affirmed. 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). The carrier appealed the determination that the claimant had disability on the theory that the claimant did not sustain a compensable injury. Since we affirmed the determination that the claimant was injured in the course and scope of her employment, we also affirm the determination concerning disability.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Robert W. Potts
Appeals Judge