APPEAL NO. 001902

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 26, 2000. The hearing officer determined that the _____, compensable injury did not extend to include the claimant's right rotator cuff tear condition. The appellant (claimant) appealed the adverse determination on the grounds of sufficiency of the evidence. The respondent (carrier) replied that the evidence was sufficient to support the determination of the hearing officer and should be affirmed.

DECISION

Affirmed.

The claimant testified that she worked for the employer assembling oil field equipment on _____, specifically wiring a panel, when she tripped on some wiring and fell to the floor landing on her right arm. The claimant testified she injured her right elbow and shoulder and sought medical treatment about a week later at the local hospital emergency room. The claimant subsequently sought treatment with Dr. C. Medical records from Dr. C indicate he diagnosed a subacrominal impingement in the shoulder and lateral epicondylitis (tennis elbow) but that the claimant had full range of motion (ROM) in the shoulder. On September 2, 1998, EMG/nerve conduction studies were performed on the right upper extremity which were normal. The claimant asserted it hurt to lift her arm and carry and push things, and she could not press down. Dr. C treated the claimant from September 1998 through December 14, 1998, when he released the claimant back to work at full duty. Dr. C certified that the claimant had reached maximum medical improvement (MMI) with a zero percent impairment rating (IR). The claimant did not dispute Dr. C's date of MMI and IR.

The claimant initially testified that she did not return to full duty and worked light duty until March 30, 1999, when she was laid off by the employer. Later in the CCH, the claimant testified that she returned to full duty after December 14, 1998. The claimant stated that physical therapy made her arm sore both before and after March 30, 1999, and that the pain in her shoulder worsened in June 1999 and continuously hurt until she returned for medical treatment in November 1999. She later testified that she began having pain in March 1999 but did not seek medical treatment before she was laid off from her employment. The claimant did not return to work after March 30, 1999.

In September 1999, the claimant testified, she called the carrier and was informed that she had continuing entitlement to medical benefits. She thereafter returned to Dr. C on November 3, 1999, claiming that she was having the same type of problems with her right shoulder and that it hurt to lift her arm and move it around. An MRI was performed on November 13, 1999, which indicated a full thickness tear of the supraspinatus portion of the rotator cuff.

Dr. O testified that he examined the claimant and that she had a small rotator cuff tear in the right shoulder. He testified that after review of the medical records he did not believe that the claimant had a rotator cuff tear between _____, and December 14, 1998, because of the clinical findings of Dr. C and the fact that the claimant continued to have full ROM of the shoulder. He speculated that another event after December 14, 1998, had caused the tear.

Medical records reflect that the claimant was initially treated on August 5, 1998, at the local hospital. The claimant provided a history of falling and hitting her head with complaints of bilateral upper extremity pain, worse in the right. A cervical strain was diagnosed. The claimant subsequently presented to Dr. U on August 11, 1998, for complaints of right arm pain, weakness and burning in the hand. The claimant began treating with Dr. C on September 29, 1998, for complaints of right shoulder pain. He noted that the claimant contended that the pain "hurt up and down her arm, and radiated into her shoulder." He noted full ROM in the shoulder and diagnosed a subacromial impingement syndrome. By letter dated March 1, 2000, he wrote that the claimant's injury of _____ was a producing cause of her current condition. The claimant was examined by Dr. W on March 20, 2000, who opined that the claimant's current condition (rotator cuff tear) was a part of the _____, injury.

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 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, 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 judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge