

APPEAL NO. 001916

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 20, 2000. The hearing officer determined that the appellant (claimant) was not injured in the course and scope of his employment on _____; that he did not timely report the claimed injury to his employer; that he did not have good cause for not timely reporting the claimed injury; and that since he did not sustain a compensable injury, he did not have disability. The claimant appealed, stated why he disagreed with the determinations of the hearing officer, and requested that the Appeals Panel reverse the decision of the hearing officer. The respondent (carrier) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. The claimant testified and had admitted into evidence statements, transcripts of interviews, and medical records. The carrier called the employer's vice president for administration and had admitted into evidence statements, transcripts of interviews, and medical records. Both the claimant and the carrier had admitted into evidence some of the same documents and emphasized parts of the documents favorable to positions advocated by each of them.

On the issue of injury in the course and scope of employment, it is undisputed that a report of an MRI dated March 24, 2000, indicates that the claimant has a large disc fragment impinging on the nerve root at L3. The claimant said that he injured his back in 1992. He does not state that he injured his low back at a specific time on _____, but contends that he injured his back on that day while using an impact wrench that weighed between 50 and 75 pounds. The claimant testified that Dr. V, who had been treating him, recommended that he see Dr. B, a neurosurgeon; that he, the claimant, did not have money to pay Dr. B; that he applied for medicaid to pay Dr. B; and that after medicaid was approved about a month later, he saw Dr. B. In a letter dated April 24, 2000, Dr. B repeated the history provided by the claimant and opined that, because of the size of the fragment, the injury did not occur spontaneously and is consistent with the history provided by the claimant. The carrier states that it was known that the claimant had back problems before he began working for the employer and that he talked about back problems while working for the employer and contends that the claimant did not injure his back while working for the employer.

Concerning timely reporting an injury and good cause for not timely reporting an injury, the claimant contends that several times within 30 days of _____, he told supervisors that he injured his back working. The carrier does not dispute that during that time period, the claimant told several people that his back was hurting and that the claimant went to emergency rooms on three occasions, but the carrier contends that during

that time period the claimant did not tell anyone in a supervisory position that he injured his back at work. The claimant contends that at first he thought that he had a pulled muscle and did not know that his injury was serious until after he had two MRIs and was seen by Dr. B. The carrier contends that the claimant's going to emergency rooms three times and to Dr. V and his testimony about the seriousness of his pain are not consistent with trivializing an injury. Whether or not the claimant had disability as claimed depends on whether he sustained a compensable 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 a claim, the testimony of a claimant is not conclusive but only raises factual questions 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 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. 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. At the hearing, the claimant acknowledged that there appear to be inconsistencies in the evidence and attempted to explain them. In the discussion in her Decision and Order, the hearing officer commented on inconsistencies in the evidence, stated that the inconsistencies were not minor, and concluded that the claimant failed to meet his burden of proof on the issues. An appeals level body is not a fact finder, and it 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). The hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and there is not a sound basis to disturb them. 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 hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and the order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Philip F. O'Neill
Appeals Judge