

APPEAL NO. 001970

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 August 2, 2000. With regard to the four disputed issues before her, the hearing officer determined 1) that the respondent (carrier) had timely contested compensability of the claimed injury, 2) that the appellant (claimant) had not sustained a compensable repetitive trauma injury on _____ (all dates are 2000 unless otherwise noted), 3) that because the claimant did not have a compensable injury, she did not have disability and 4) that the employer had tendered a bona fide offer of employment (BFOE) to the claimant.

The claimant appealed, generally contending that she sustained a compensable injury based on her "testimony and evidentiary documentation." The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The carrier urges affirmance.

DECISION

Affirmed.

The claimant was employed by (employer) and was sent to work at the (Company E) plant as an assembler. The claimant testified that she began to have arm pain in _____ and that she reported that to her leadman, JCM. That testimony is disputed. The claimant was terminated on March 2. Whether the claimant again reported her injury before her termination, the circumstances of the termination, and whether the claimant was only terminated from her assignment with Company E or was terminated from employment were all disputed facts. Undisputed was that at some time on March 2, the claimant reported her injury to the employer. The carrier's documentation indicates it received first written notice of the injury on March 3 and filed its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) forms on March 31 (disputing entitlement to temporary income benefits (TIBs)), April 12 (asserting a BFOE had been extended on March 28) and April 28 (disputing compensability).

The claimant sought medical attention in a hospital emergency room (ER) on the evening of March 2. An ER report indicated complaints of the right elbow, wrist, and forearm and gives a diagnosis of soft tissue injury to the right wrist and elbow. The claimant subsequently saw Dr. M, who in a report dated March 16, noted complaints "for approximately the last month," with an impression of "neuromuscular pain," "lateral epicondylitis of the right elbow" and "right ulnar neuritis at the elbow." Dr. M released the claimant to light duty effective March 17. In evidence is a letter dated March 28, which offers the claimant employment "viewing safety videos" for one week. The claimant subsequently changed treating doctors to Dr. A who took the claimant off work on June 22. The claimant testified that she was unable to work after March 2.

The hearing officer gives a detailed Statement of the Evidence and comments:

The fact that the claimant did not report an injury until after her assignment had been terminated and the inconsistencies in the testimony and documentary evidence is suspect. Based on the credible evidence and testimony presented, Claimant failed to prove she sustained an injury in the course and scope of her employment on _____, therefore, she did not have disability.

Regarding the timely dispute by Carrier, Claimant failed to present evidence regarding this issue, however, Carrier submitted three TWCC-21s in this claim. . . . Therefore, Carrier did not waive its right to dispute compensability of the claim since it disputed compensability within 60 days of the date it received notice of the claimed injury.

The evidence was obviously in conflict on all the issues. 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, 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 judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. King, *supra*. We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge