APPEAL NO. 002004

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 9, 2000. The issues at the CCH were compensability, date of injury, election of remedies, 30-day notice to employer, and disability. The hearing officer determined that the date of the alleged injury was _____; that the appellant (claimant) did not sustain a compensable injury; that he had given timely notice to the employer; did not have disability; and that he did not make an informed choice as to election of remedies. The claimant appealed the hearing officer's determinations that he did not sustain a compensable injury and had no disability. The respondent (carrier) responds that the hearing officer's decision is supported by the evidence and requests that we affirm the decision.

DECISION

Affirmed.

The claimant worked as an apprentice linesman for (the employer). On January 20, 2000, he told the employer that he wanted to file a workers' compensation claim in order to have an MRI on his back. The hearing officer found that the date of the claimed injury was _____; that the claimant gave notice of injury to his employer within 30 days of the date of injury; and that the claimant was not barred from receiving workers' compensation benefits as a result of an election to receive benefits under a group health insurance policy or other insurance policy. Those determinations have not been appealed and have become final.

The claimant testified at the hearing that he had been working a wreck-out of televison cables on _____. At the hearing, the claimant testified that he had climbed the pole, cut the cable loose, come down the pole, rolled the cable, and felt the onset of severe low back pain as he dragged the coiled cable up an embankment to the side of the road to be placed in a trailer. The sequence of events testified to by the claimant at the hearing is markedly different from the one given to the carrier's interviewer in a telephone interview conducted on January 21, 2000, the day after the claimant told the employer that he wanted to file a claim for workers' compensation benefits.

The hearing officer did not find the claimant to be credible and found that the claimant had not sustained a compensable injury in either the form of a repetitive trauma injury or a specific injury. The claimant expresses his disagreement with the hearing officer's findings.

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. The hearing officer noted that the claimant had given conflicting versions of the manner in which the injury occurred and was not 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 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).

The claimant also expresses his disagreement with the hearing officer's determinations that he had no disability and with the period of potential disability found by the hearing officer. Since disability is defined as an inability to obtain and retain employment as a result of a compensable injury, and we decline to reverse the hearing officer's decision that the claimant did not sustain a compensable injury, we affirm the hearing officer's finding that the claimant had no disability resulting from the injury.

Having reviewed the record and finding no reversible error, we affirm the decision and order of the hearing officer.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge