

APPEAL NO. 002011

Following a contested case hearing held on July 28, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant) had not sustained a compensable injury on _____, and did not have disability resulting from the alleged injury. The claimant appealed, asserting that the hearing officer's decision was against the great weight and preponderance of the evidence and requesting that we reverse the decision of the hearing officer. No response was found in the file from the respondent (carrier).

DECISION

We affirm the decision of the hearing officer.

The claimant alleged at the hearing and on appeal that he had sustained a low back injury on _____, while pulling buckets of cement up with the assistance of an electric pulley. The claimant asserts that the hearing officer erred in finding that he did not sustain a compensable low back injury and did not, therefore, have disability as defined by the 1989 Act.

Conflicting evidence was presented by the claimant and the carrier. 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. 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. 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). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The decision and order of the hearing officer are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge