APPEAL NO. 002025

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 7, 2000. The issues at the CCH were compensability and disability. The hearing officer determined that the appellant (claimant) had sustained a compensable injury and had disability from February 25, 2000, through March 5, 2000, and from March 13, 2000, through May 29, 2000. The claimant appealed the hearing officer's determinations that disability ended on May 29, 2000. The respondent (carrier) responds that the decision and order should be affirmed.

DECISION

Affirmed.

The claimant was employed by (employer) as a customer service representative on _____, and sustained a lumbar strain when she twisted in her chair to talk to her supervisor. The compensability of the injury has not been appealed, nor has the hearing officer's determination that the claimant had disability from February 25, 2000, through March 5, 2000, and from March 13, 2000, through May 29, 2000. Those determinations have become final. The claimant appeals the hearing officer's determination that the disability ended on May 29, 2000, asserting that the great weight and preponderance of the evidence is that she continued to have disability from May 30, 2000, through the date of the hearing.

The claimant takes the hearing officer to task for failing to ask the claimant why her treating doctor, Dr. T, had decreased the number of chiropractic visits. While the hearing officer did examine the claimant, a review of the examination fails to support the claimant's assertion that the hearing officer's questions were less than impartial. In that examination, the hearing officer noted that Dr. T had filled out a form (Claimant's Exhibit No. 6) which contained a return-to-work date of May 29, 2000. The hearing officer then asked the claimant what Dr. T had discussed with her about her return to work and the claimant responded that Dr. T had not discussed any return-to-work plans with her. Both the claimant and the carrier were then allowed to develop any further evidence that they felt necessary, and both declined.

"Disability" means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The determination as to an employee's disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992. The claimant's job is not one which required significant lifting, bending, stooping, or other strenuous activities, although the claimant did describe her job as involving a lot of movement.

A review of the chart notes from Dr. T indicates that the claimant reported that her low back pain was much better on March 24 and March 27, that she was sore on March

29, and was much better on April 10, 2000. On April 12, 2000, Dr. T noted that the claimant reported that she awoke with a headache, but there is no mention of low back pain in his chart note. The claimant did not offer any other medical records from Dr. T to support her assertion that she continued to be unable to return to work through the date of the hearing.

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 disputed fact, 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 claimant's testimony of continued disability, when considered in light of her treating doctor's opinion that the claimant would be able to return to work without restrictions no later than May 29, 2000, presents the hearing officer with conflicting evidence which she must weigh.

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, 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 hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The burden of proof to establish disability is on the claimant and the issue is one of fact for the determination of the hearing officer. Texas Workers' Compensation Commission Appeal No. 941566, decided January 4, 1995; Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer concluded that the claimant did not sustain that burden here. Her determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust.

Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ).

Accordingly, the decision and order are affirmed.

_____
Kenneth A. Huchton
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge