

## APPEAL NO. 002031

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 July 10, 2000, in (city 1), Texas. With regard to the sole disputed issue before him, the hearing officer determined that the appellant (claimant) had not sustained a compensable (low back) injury on \_\_\_\_\_ (all dates are 1999 unless otherwise noted).

The claimant appealed, asserting that she was injured; that a witness did "not testify due to possible repercussions," disputing the number and weight of certain water bottles; and explaining her testimony about prior workers' compensation injuries. The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The respondent (self-insured) responds, initially asserting that the claimant's appeal was not timely filed and that on the merits the decision be affirmed.

### DECISION

Affirmed.

First, addressing the self-insured's contention that the claimant's appeal was not timely filed, our review of the Texas Workers' Compensation Commission's (Commission) records show that the hearing officer's decision was sent to the claimant on July 14, 2000, at an (city 2), Texas, address. The claimant's sign-in sheet, however, shows a (city 3), Texas, address and when the claimant testified at the CCH, she gave the (city 3), Texas, address. Consequently, the Commission apparently sent the hearing officer's decision to a wrong former address. The evidence in the record shows that the claimant's former attorney sent the claimant the hearing officer's decision to her at the (city 3), Texas, address in an envelope postmarked August 16, 2000. The claimant, in her appeal, stated that she received the hearing officer's decision on August 17, 2000, and timely filed her appeal on August 31, 2000. The claimant's appeal was timely filed.

On the merits, the evidence and testimony are essentially conflicting. The claimant was employed by the self-insured's health science center as a lab assistant and Dr. KH was her supervisor. The claimant testified that she sustained a low back injury lifting some half full water bottles on \_\_\_\_\_. The size and weight of the bottles, the number of bottles involved, and whether the claimant had been told not to move the bottles, was in dispute. A representative bottle was brought to the CCH for the hearing officer to see and judge the weight. The claimant reported her injury and was sent to Dr. C.

Dr. C, in notes dated August 26, diagnosed an "LS strain," prescribed therapy "3x/wk" and referred the claimant to Dr. N. Dr. N, in progress notes beginning September 2, noted "c/o pain from ,, neck | lumbar/sacral area." Dr. N took the claimant off work (disability is not an issue) on September 23 for three weeks. Dr. N certified the claimant at maximum medical improvement (MMI) on October 7 with a zero percent impairment rating (IR) (MMI and IR are also not at issue) and apparently discharged the claimant at that time. The claimant's attorney referred the claimant to Dr. A, who apparently began

seeing the claimant on October 20. Dr. A took the claimant off work for two weeks on October 20, noting a history of "lifting 75-100 lb water [bottles]." Dr. A diagnosed a "lumbosacral lig. sprain." In a follow-up exam dated November 15, Dr. A noted "sx magnification possibility." In another follow-up exam dated December 1, Dr. A noted "(1) Symptom Magnification (2) Malingering" and stated "confronted Patient with inconsistent improbable exam findings on last 3 exams." Dr. A subsequently withdrew as the claimant's treating doctor by letter dated December 3. The claimant then began treating with Dr. T, who testified that the claimant had a lumber strain/sprain or sciatica. In evidence is a report of an MRI performed on April 12, 2000. The impression was:

1. Suggestion of internal derangement of all lumbar discs.
2. There is no disc herniation or nerve root displacement.
3. There is no central spinal stenosis or foraminal narrowing.

The parties disputed whether that impression was essentially normal or not for a woman of the claimant's age.

There was other disputed evidence whether the claimant had had prior workers' compensation claims, and regarding the claimant's attendance and work history. The hearing officer, in the Statement of the Evidence, noted that the claimant's "credibility to be quite low" and further commented:

Both [Dr. N] and [Dr. A] found Claimant's behavior and symptoms to be so inconsistent with clinical findings that they wrote strongly negative reports. [Dr. A] even recommended a psychological consultation.

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The MRI report dated April 12, 2000 does not show any significant disorder of the lumbar spine, and neither that report nor [Dr. T's] testimony conclusively ties the back condition to the alleged injury at work on \_\_\_\_\_.

The evidence is in conflict and the hearing officer is the trier of fact and the sole judge of the relevance and materiality of the evidence and 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 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). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Finding sufficient evidence to support the hearing officer's determinations, we affirm the hearing officer's decision and order.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge