APPEAL NO. 002045

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 28, 2000. The issues at the CCH were extent of injury and disability. The hearing officer determined that the compensable injury did not extend to the cervical spine and that the claimant had less than seven days of disability. The appellant (claimant) appealed the hearing officer's determinations, asserting that the great weight and preponderance of the evidence proved that the compensable injury extended to the cervical spine and that he had disability up to the date of the hearing. The respondent (carrier) responded that the hearing officer's decision was adequately supported by the evidence and should be affirmed.

DECISION

The Decision and Order of the hearing officer is affirmed as reformed.

The claimant worked for (employer) as a driller. He had worked for the employer before, but on March 12, 2000, he had just returned to work for the employer on a drilling rig near (city 1). The claimant was hired as a driller, but on the date of the injury the derrick man in the rig came out of the derrick and the claimant left the rig floor and went up into the derrick to take over the derrick man's duties.

The claimant testified that the derrick board on the rig had been moved back and he had to lean over farther than normal in order to work the drill pipe in the derrick. The claimant testified that as he leaned out from the derrick board he was in an almost horizontal position. The claimant testified that usually he would be able to straighten up by pushing off on the stand of drill pipe but, immediately before he was injured, his right hand was smashed between the stand of pipe and the elevators, causing him to miss the stand of pipe. The claimant testified that because he had missed the stand of pipe, he had to twist and turn in order to get onto the derrick board. The claimant testified that as he twisted, he felt pain in his neck, but was more concerned with his hand because he thought he had broken it. He worked several more stands of pipe, and then came down from the derrick because the rig lost circulation and the derrick work was suspended.

At the end of his shift, the claimant cleaned up, changed his clothes, and then went to the tool pusher's shack to report his injury. The claimant testified that he reported both a right hand and a neck injury to the tool pusher, Mr. S. At the time he reported his injury to Mr. R, an assistant drilling superintendent for the employer, was also in the tool pusher's shack. Both Mr. S and Mr. R deny that the claimant ever mentioned a neck injury, although both acknowledge that he reported that he had injured his right hand.

The claimant testified that he went home, tried to sleep, but could not due to the pain in his right hand. On the afternoon of March 12, 2000, the claimant sought medical treatment for his right hand at (the hospital) in (city 2). The hospital's records do not reflect

any report of neck pain or injury. The claimant acknowledged that he only sought treatment for his hand at the hospital.

On March 14, 2000, the claimant had a follow-up visit with Dr. G, at the (clinic). Dr. G diagnosed a deep contusion of the bones of the dorsum of the right hand with moderate swelling, prescribed conservative care, and issued a return-to-work authorization for March 16, 2000. The return-to-work authorization coincided with the claimant's usual work schedule; he was to work 12-hour days, four on and four off, and the date of injury was the last day of a four-day-on cycle.

On the morning of March 16, 2000, the claimant called the employer and quit. The reason the claimant gave for quitting was an inability to find hands for his crew. At the hearing, the claimant testified that he quit because of the pain in his hand and the inability to find hands. Since quitting the employer, the claimant has worked at only one job, a short-lived effort to work for (company 1), another drilling company. The claimant testified that he only worked for company 1 for two days, then quit due to his hand and neck problems.

The claimant received no other medical treatment until he began treating with Dr. D, of (city 3) on March 27, 2000. Dr. D's records reflect that the claimant complained of both hand and neck pain, with the neck pain attributed to exertion while trying to pull himself onto the derrick board. Symptoms noted on what appears to be an evaluation sheet included with Dr. D's records include headaches in the temple; memory loss; blurred vision; dizziness; pain in the neck and with movement in all planes, together with popping sounds in the neck; numbness in the right arm and fingers; fingers that go to sleep; loss of grip strength; pain in the right hip; nervousness; irritability; depression; fatigue; sleep loss; and weight loss. The claimant continued treating with Dr. D, according to his testimony, through the date of the hearing. On June 8, 2000, Dr. D sent a letter to a Texas Workers' Compensation Commission ombudsman, advising her that he believed that the claimant's cervical injury occurred on _____, along with the hand injury.

In his appeal the claimant avers that the hearing officer's decision that he did not sustain a cervical injury on _____, is contrary to the great weight and preponderance of the evidence and is manifestly unjust. The claimant outlines evidence favorable to his position, asserting that there was no evidence controverting the claimant's testimony concerning the manner in which the injury occurred and that the only controversy was whether the mechanism of injury resulted in a cervical injury. The claimant avers that his belief that his neck was just sore was more than reasonable and that it is extremely common for an injured worker to trivialize an injury. The claimant then states that when the lack of controverting evidence (regarding the mechanism of injury) is considered, ". . . one is lead to the conclusion that the Hearing Officer's decision is not based on the facts submitted at the Hearing."

Contrary to the claimant's assertion, there was conflicting testimony before the hearing officer on the issues of the existence of a cervical injury, the cause of the cervical injury, and whether the cervical injury was reported on the date of injury, as testified to by the claimant. 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 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, 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 determination of the hearing officer that the claimant did not sustain a cervical injury on _____, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The claimant further asserts that the decision of the hearing officer that he had less than seven days of disability is contrary to the great weight and preponderance of the evidence. The claimant urges us to find that he had disability beginning on an unspecified date and that the disability continued through the date of the hearing in this matter. 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. While there is evidence that the claimant was taken off work completely by Dr. D on March 27, 2000, and there is no evidence that the claimant has been released to return to work, the hearing officer could find from the evidence presented that the claimant's inability to obtain and retain employment at wages equivalent to his preinjury wage after March 16, 2000, was the result of either the claimant's decision to quit the employer because he

could not find workers and/or the alleged cervical strain, not the injury to the right hand. From the findings of fact set forth in the decision and order, it can be inferred that the hearing officer found that the claimant was unable to engage in full-duty work for employer, but that the restrictions on the claimant's activities ended when Dr. G released the claimant to return to full duty.

The hearing officer made the following findings of fact:

**FINDINGS OF FACT**

5. Claimant had trouble finding a drilling crew and quit Employer on March 16, 2000.

6. Claimant was released to return to work at the time he quit.

7. Claimant has been able to obtain and retain employment at wages equivalent to his preinjury average weekly wage at all times since March 16, 2000.

The hearing officer then set forth the following conclusion of law:

**CONCLUSION OF LAW**

4. Claimant has not suffered seven days of disability as defined by the Texas Workers' Compensation Act.

While the findings of fact are supported by the evidence, and the conclusion of law is correct, the hearing officer's Conclusion of Law No. 4 does not dispose of the issue reported out of the benefit review conference and announced at the beginning of the hearing: did the claimant have disability resulting from the compensable injury, and if so, for what period or periods?

In light of the finding that the claimant was able to obtain and retain employment at wages equivalent to his preinjury wage beginning on March 16, 2000, coupled with the uncontroverted testimony that the claimant was not scheduled to work from March 12 through March 16, 2000, but was returned to full duty by Dr. G on March 16, 2000, we reform Conclusion of Law No. 4 to read:

4. The claimant had disability resulting from the compensable injury of _____ beginning on March 13, 2000 and continuing through March 15, 2000.

We affirm the decision of the hearing officer as reformed.

_____
Kenneth A. Huchton
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Robert W. Potts
Appeals Judge