APPEAL NO. 002064

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 16, 2000. The issue at the CCH was whether the claimant had disability after May 8, 2000. The hearing officer determined that the appellant (claimant) had been terminated for cause from a light-duty assignment with (employer) on May 9, 2000, and had not had disability from that date through the date of the hearing. The claimant appealed the hearing officer's determination, asserting that the termination was not for good cause and that his disability continued through the date of the hearing. The respondent (carrier) requests that the decision and order of the hearing officer be affirmed.

DECISION

Affirmed.

The claimant sustained a knee injury when he tripped and fell onto concrete at a construction site. He had some disability, then was offered a light-duty assignment by the employer. He accepted the assignment and was employed as a greeter and office worker, employment which was within the restrictions outlined by his attending physicians, until he was terminated by the employer on May 9, 2000, for speaking to a coworker, Ms. J in a threatening manner or potentially threatening manner on May 4, 2000.

Evidence of the events of May 4, 2000, was presented by both the claimant and the carrier. The claimant testified that he did not threaten Ms. J. The carrier presented testimony from Ms. L, and Mr. B.

Ms. J testified as follows:

> Well, he told me that wasn't fair, that part of his job was answering the phone, and I told him no it was not. It was a greeter, there was nothing about answering the phones. He continued on about that we weren't treating him right and that it wasn't fair, and I explained the situation about the business phones. When he proceeded to keep on about it not being fair to him, and he basically told me that your day is coming, you'll get yours type of thing.

Ms. J testified that she felt threatened and was made very uncomfortable by the claimant's repeated statement on May 4, 2000.

The carrier offered statements from several people who were in the office while the foregoing exchange took place and those individuals confirmed the essence of Ms. J's testimony. Mr. B testified that he investigated the situation, determined that a confrontation with the potential for violence had taken place between the claimant and Ms. J on May 4, 2000, and had terminated the claimant as a result of the confrontation in accordance with the employer's policy of zero tolerance for actual or potential workplace violence.

The claimant testified that after he was terminated by the employer, he looked for work within the restrictions outlined by his doctor. He testified that he believed that he had obtained a job as a bus driver, and had undergone the training for the job, but was told that he would not be hired without a full release from his doctor. The claimant also testified that he had gone to the Texas Workforce Commission to look for work, but was told that he didn't qualify for any jobs because of his restrictions.

In his appeal, the claimant expresses his disagreement with the hearing officer's following findings of facts:

FINDINGS OF FACTS

8. Claimant made threatening remarks to a co-employee.

9. Claimant was terminated for good cause on May 9, 2000.

10. Claimant's unemployment after May 9, 2000, is not a direct result of his compensable injury.

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). 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 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 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). The hearing officer weighed all of the evidence before him and determined that the claimant's statements to Ms. J on May 4, 2000, were threatening; that the threats made by the claimant on May 4, 2000, established good cause for the claimant's termination by the employer on May 9, 2000; and that the claimant's threatening remarks and subsequent termination were the reason for the claimant's unemployment from the date of termination through the date of the hearing. We can infer from Finding of Fact No. 10 that the hearing officer further found that the claimant had not looked for work within his restrictions after being terminated by the employer. The hearing officer evidently found that the claimant's testimony that he had attempted to secure alternate employment after his termination was not credible and afforded it no weight. In making the foregoing determinations, the hearing officer properly exercised his statutorily mandated function as the trier of facts.

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 determinations of the hearing officer, we will not substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Finding no reversible error and adequate support for the hearing officer's determinations in the record, the Decision and Order of the hearing officer is affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge