APPEAL NO. 002075

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 10, 2000. The issues at the CCH were compensability and disability. The hearing officer determined that the claimant had not sustained a compensable injury and had not had any disability resulting from the alleged injury. The appellant (claimant) appealed the hearing officer's determinations, asserting that her determinations were against the great weight and preponderance of the evidence and reciting evidence favorable to him. The respondent (carrier) responds that the hearing officer's decision is supported by the evidence and should be affirmed.

DECISION

Affirmed.

The claimant testified that he had slipped in a grease or oil spill while walking back to his work area at the power plant where the employer was constructing scaffolds. He testified that he had struck his knee on the concrete when he fell. He immediately reported the incident to his supervisor. The claimant testified that he worked the next day, but was told by his supervisor to take Friday, Saturday, and Sunday off. When the claimant returned to work on Monday, his employment was terminated.

The carrier presented evidence that the supervisor had noted that the claimant's brand new coveralls had no grease or oil on them. Upon further investigation, the employer was unable to verify that anyone had slipped in the oil spill that the claimant identified as the location of his accident. The carrier also presented evidence that shortly after the reported accident, the claimant's wife had called the employer, that she had told the employer that the claimant had injured his knee while mowing the yard, and that she had told the employer that the claimant was running with the children at a family member's house on Easter, shortly after the alleged injury. The claimant explained that there was no oil on his coveralls because he rubbed it off and that his wife called and gave fake information to the employer because she was angry with him. The hearing officer rejected these explanations.

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 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 his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994. We find no error in the hearing officer's determination that the claimant did not sustain the alleged injury on April 19, 2000. Disability is contingent upon the existence of a compensable injury. Section 401.011(16). Because there was no compensable injury, the hearing officer did not err in finding no disability.

Finding no reversible error and sufficient evidence to support the decision of the hearing officer, the hearing officer's Decision and Order is affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge