

## APPEAL NO. 002113

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 17, 2000. The hearing officer determined that the appellant (claimant) was not injured in the course and scope of his employment on \_\_\_\_\_. The claimant appealed; contended that the documents in evidence and the testimony support a determination that on \_\_\_\_\_, he sustained a compensable injury to his cervical spine, right shoulder, right elbow, right wrist, and right thumb; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The respondent (self-insured) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

### DECISION

We affirm.

The Decision and Order of the hearing officer contains a thorough statement of the evidence. Briefly, the claimant testified that on Friday, \_\_\_\_\_, Ms. S, the operations coordinator, struck him on his right shoulder with a closed buck knife; that his elbow was on the arm of a chair and his chin was on his hand; that his elbow slipped and at least his hand went to the floor; and that he was injured. Ms. S testified that a pocketknife had been found in the break room, that she was told that it may belong to the claimant, that she went to the claimant's workstation and asked if the pocketknife was his, that the claimant said that it was not, that she stayed about three feet from the claimant and did not touch him, that she did not see the claimant injure himself, and that she walked away.

The claimant testified that he went to a Veterans Affairs Hospital on \_\_\_\_\_; that his high blood pressure was treated; and that he was told to take medication he had for his pain from the injury. The claimant went to Dr. P, a chiropractor, on Monday, February 14, 2000. In an Initial Medical Report (TWCC-61) dated February 25, 2000, Dr. P said that he saw the claimant on February 14, 2000; that the claimant told him that a coworker struck his right shoulder with a blunt object; and that as he tried to escape he injured his right shoulder, right thumb, right wrist, right elbow, and cervical spine. In a letter dated May 9, 2000, Dr. P stated that in his medical opinion the claimant's injury to his cervical spine, right shoulder, right elbow, right wrist, and right thumb occurred as a result of a work-related incident on \_\_\_\_\_.

The burden is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of his employment. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. 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 hearing officer is not bound by the testimony of a medical witness when the credibility of that testimony is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Texas Workers' Compensation Commission Appeal No. 952044, decided January 10, 1996. An expert witness's deductions from facts are not binding on the hearing officer even when they are not contradicted by another expert. Texas Workers' Compensation Commission Appeal No. 961610, decided September 30, 1996. The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the evidence. 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). The hearing officer resolved the conflicts in the evidence against the claimant and determined that the claimant was not injured in the course and scope of his employment on \_\_\_\_\_. Only were we to conclude, which we do not in this case, that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb that determination. 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, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and the order of the hearing officer.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge