APPEAL NO. 002150

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 (CCH) was held. The hearing officer determined that the appellant (claimant) sustained a compensable abdominal strain on _____; that the claimant did not injure his back at work on _____; and that the claimant had disability from November 5 until November 23, 1999. The claimant appealed; contended that the evidence established he injured his low back at work on _____, and that he also had disability beginning on December 17, 1999, and continuing through the date of the CCH; and requested that the Appeals Panel reverse the findings of the hearing officer concerning the injury to his back and disability and render a decision that he injured his low back in the course and scope of his employment on _____, and that he had disability from _____ to November 23, 1999, and from December 17, 1999, through the date of the CCH. The respondent (carrier) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that his decision be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary of the evidence will be included in this decision. The claimant, who worked as a sanitation technician, testified that he felt a sharp pain in his stomach when he and a coworker lifted a heavy trash can on _____; that he dismissed it at the time and did not tell the coworker; and that he later told his supervisor he had pain in his stomach, did not know what it was, and it felt like he had eaten bad food. The claimant's supervisor and the employer's human resources manager testified that the claimant told them his stomach was hurting, that he thought he had eaten a bad hamburger, that the claimant did not say his back was hurting, and that he did not say he had lifted a heavy trash can.

Emergency room records dated _____, indicated that the claimant complained of a hard knot on the right side of his abdomen, stomach and back pain, vomiting, and nausea; that the claimant said the pain started from lifting something heavy; and that the diagnosis was ventral hernia. On _____, the claimant was seen at a clinic used by the employer. A report from the clinic states that the claimant said he was lifting and pulling garbage cans on November 5, 1999; that he had severe pain on the right side of his abdomen; that examination revealed a knot; that the diagnosis was abdominal wall strain and ventral hernia; and that the claimant was released to return to work with restrictions on November 15, 1999. The claimant was treated by Dr. N who diagnosed an inguinal strain and released the claimant to return to work full duty on November 22, 1999. The claimant was seen by Dr. R, a chiropractor, on December 17, 1999. Dr. R diagnosed abdominal pain, lumbar disc displacement without myelopathy, lumbosacral

neuritis/radiculitis, and muscle spasm; opined that the claimant's condition resulted from a _____, work-related incident; and took the claimant off work effective December 17, 1999, and kept him off work. An MRI dated January 15, 2000, revealed a 6 to 8 mm disc herniation at L5-S1.

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 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 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 determination that the claimant did not injure his low back in the course and scope of his employment is so against the great weight and preponderance of the evidence as to be clearly wrong or 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 that determination of the hearing officer, we will not substitute our judgment for his and we affirm the determination that the claimant did not injure his back on November 4, 1999. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The claimant's contention that he had disability from December 17, 1999, through the date of the CCH is based on the compensable injury including an injury to the low back. Since we have affirmed the determination that the claimant did not injure his back on _____, we affirm the determination that the claimant had disability from November 5 until November 23, 1999.

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

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge