APPEAL NO. 002176

Following a contested case hearing (CCH) held on May 3, 2000, pursuant to the Texas Workers' Compensation Commission Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant) did not injure any part of his spine while driving a tractor trailer for the employer on or about _____, and that he did not have disability. The decision was appealed by the claimant and the matter was remanded to the hearing officer in Texas Workers' Compensation Commission Appeal No. 001316, decided July 21, 2000. The Appeals Panel remanded the case to the hearing officer for further consideration of all the evidence and for a finding as to whether the claimant sustained a strain/sprain to any portion of his neck or back and whether he had disability as a result of any such injury.

As instructed by the Appeals Panel, the hearing officer did not convene a new hearing. A new decision and order was rendered by the hearing officer on August 28, 2000, based upon the evidence adduced at the CCH of May 3, 2000. In the decision and order on remand, the hearing officer entered a finding of fact that the claimant did not sustain an injury to any part of his neck (soft tissue and/or spine), nor did the claimant sustain a strain and/or sprain to any portion of his neck or back, as a result of driving a tractor for his employer on or about _____. The hearing officer also found that the claimant did not have disability and that any inability of the claimant to obtain and retain employment at wages equivalent to his preinjury wage was due to something other than an alleged _____, compensable injury. The claimant again appealed the adverse determinations on the grounds of sufficiency of the evidence. The respondent (carrier) replied that the evidence was sufficient to support the decision and order and should be affirmed.

DECISION

Affirmed.

The facts of this case are set out in Appeal No. 001316, *supra*, and will not be set forth herein. On remand the hearing officer made the requested findings of fact as to whether the claimant had sustained a sprain/strain to his neck and back, and, based upon those findings as well as those previously rendered in the initial decision and order, concluded that the claimant did not sustain a compensable injury on _____, and did not have disability. These determinations were within the province of the hearing officer to make. 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, 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.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge