

APPEAL NO. 002201

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 1, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and had disability as a result of the compensable injury from January 17, 2000, through February 3, 2000. The appellant (self-insured) appealed the adverse determinations on the basis of sufficiency of the evidence. The appeals file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that she was lifting and pulling boxes of brochures while standing on a ladder on Thursday, _____, when she felt pain on the right side of her chest and rib area. She stated she had difficulty breathing and did not feel well, so she went home around noon that day. The claimant admitted she did not notify her supervisor that she was leaving work but contended that she advised a coworker, Ms. T, on her way out of the building that she was having a hard time breathing and did not feel well. The claimant testified she did not tell Ms. T that her problems were work related and she returned to work the following day.

According to her recorded statement, the claimant did not work the following Monday or Tuesday but she returned to work on Wednesday, January 12, 2000, and also worked on Thursday. The claimant testified that she did not return after lunch on Friday, January 14, 2000, admitting that she did not telephone the employer to let her supervisors know that she was not coming back, but explained her absence was caused by taking two pain pills which put her to sleep. The claimant stated that prior to leaving at noon she had asked Mr. H if it was possible to break a rib lifting heavy boxes. The claimant also contended that the conversation was witnessed by Mr. F, a supervisor, and Mr. E. The claimant admitted that she had been counseled in January by her supervisor but could not remember why.

The claimant testified that she did not report an injury until January 17, 2000, and sought medical treatment the same day with Dr. P who diagnosed an abdominal wall strain. Dr. P's progress note from this date reflects that the claimant presented with right-sided rib pain for one week and that she "lifts all day at work-sudden onset pain." He released the claimant from work for a week and the claimant returned for follow-up treatment on February 1, 2000. Dr. P released the claimant back to work with the restriction of no lifting. The claimant contended that she had disability from January 17, 2000, through February 3, 2000, because she was unable to work and had been taken off work by Dr. P. She returned to light duty on February 4, 2000, at her same preinjury wage and eventually progressed back to her regular full-time duties. The claimant denied that she sustained her injury at home while taking laundry out of the back of her truck.

Mr. H testified on behalf of the claimant that he was the health and safety representative for the union and his job consisted of unloading stock off a truck and bringing the boxes to the claimant, who unloaded them. He acknowledged that at about 11:00 a.m. on January 14, 2000, the claimant asked him if it was possible to injure her ribs pulling on the large cartons/boxes and he told her that he thought so and asked her why. The claimant replied that she had hurt herself and Mr. H told her to report the injury to her supervisor. Mr. H stated it was his impression that the incident had occurred "20-30 minutes earlier" because the claimant was in pain.

A recorded statement from Ms. S reflects that the claimant mentioned to her on January 12, 2000, that she was in pain because she had hurt her ribs as she was loading or unloading some clothes to wash and fell or tripped hitting her truck. Ms. S stated that she did not recall the claimant saying anything to her about hurting herself at work on January 6 or 7, 2000. Ms. S testified that the claimant called her on January 18, 2000, to advise her that she, the claimant, had gone to the doctor and had been told that her ribs were not broken. Ms. S stated that the claimant told her that she had reinjured her ribs while lifting and would not be lifting anymore.

A recorded statement from Mr. B reflects that he worked part-time in the publication distribution center with the claimant. Mr. B asserted that on January 12, 2000, the claimant told him that she had lifted something heavy out of the bed of a truck while leaning over and slipped or fell striking her chest area on the truck, and, from that time on, had been having pain. Mr. B recalled that the claimant, from time to time, including the week of January 7, 2000, had complained of pain while working, but he could not recall any specific incident. Mr. B, in response to questioning, replied that the claimant on January 12, 2000, had not necessarily mentioned that the pain was worse, that "it was kind of the same complaint. Just uh, just kind of another instance of her kind of talking about her complaint, not—I don't really think seemed any worse, just it was hurting her, just again."

A short statement from Mr. Z reflects that the claimant did not say anything to him about injuring herself either on or off the job. Ms. T's written note reflects that the claimant had talked to her about her chest hurting, but that the claimant did not report a work-related injury to her. Mr. F gave a written statement in which he recited that neither he nor Mr. E could recall having a conversation with the claimant about an injury in mid-January. He stated that Mr. E remembered having a conversation with the claimant while on a smoking break, but Mr. F stated that he was not present.

In her Statement of the Evidence the hearing officer recites that she found the claimant's testimony to be credible and that the preponderance of the evidence supported a compensable injury and disability from January 17, 2000, through February 3, 2000.

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.

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 hers. 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:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge