APPEAL NO. 002224

Following a contested case hearing held on August 24, 2000, pursuant to the Texas Workers' Compensation 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 sustain a compensable injury on _____, and did not have disability resulting from the claimed injury. The claimant appealed, asserting that the hearing officer's decision is against the great weight of the evidence and should be reversed. The respondent (carrier) replied that the hearing officer's decision is supported by the evidence and should be affirmed.

DECISION

The decision of the hearing officer is affirmed.

The claimant was employed by (employer) as a clerical worker on _____. She testified that she bent to retrieve an envelope from the floor and felt the onset of low back pain. The pain became progressively worse and the claimant left work. It is unclear from the evidence, but it can be inferred that the claimant left before the end of her normal workday on _____. The claimant went from work to her mother's house, and from there to the emergency room at (hospital 1). She was examined, treated conservatively, and discharged with instructions to seek additional medical care.

On February 8, 2000, the claimant called her family doctor, Dr. W. At the time she called Dr. W, the claimant was in severe pain. He suggested that she go to (hospital 2). She did so and was admitted for pain management. Diagnostic studies were done, a large herniated disc was found at L4-5, and emergency surgery was performed by Dr. L after the claimant developed incontinence.

After her surgery on February 13, 2000, the claimant improved, but thereafter her condition deteriorated significantly. Dr. L then referred the claimant to Dr. B. After diagnostic testing, Dr. B performed additional surgery on April 12, 2000. Dr. B has followed the claimant since her second surgery and is of the opinion that she will be unable to return to work until sometime in 2001.

It is undisputed that the claimant has an injury, but the date of injury and location was disputed by the carrier. The carrier asserted that the claimant's injury stems from a slip and fall at home in late November 1999. As she was seeing her daughter off to school in late November, the claimant slipped on the step at her home, landing on her buttocks. She experienced low back pain from that incident. On January 12, 2000, she sought medical treatment for the continuing low back pain. In notes of that visit, Dr. W's chart note reads:

Here for pain in back. Fell off porch x 1 mo. getting worse.

Dr. W noted that the claimant's lumbosacral spine was tender, right greater than left, and that standing on her left foot caused the claimant pain. Dr. W diagnosed low back pain

and sciatica, and prescribed Naproxen, Darvocet, and Flexeril. It is noted that when the claimant went to hospital 2 in February, she advised them that she was taking Flexeril for a low back strain that she sustained three months earlier. That report is contrary to the claimant's testimony at the hearing that she had never filled the prescriptions from Dr. W.

The claimant acknowledges that she had sustained a low back injury in November 1999, and asserts that the herniated disc which was diagnosed in February was an aggravation of the preexisting injury. In support of that assertion, she points to a report by Dr. T, an individual hired by the carrier to review the claimant's medical records and provide an opinion on the causation of the claimant's condition. In his report to the carrier, Dr. T stated:

> I assume you are asking my opinion as to whether her disc herniation resulted from a fall on an icy surface in November 1999 or from the simple act of stooping on _____. First, the 1999 injury probably represented a significant impact. Second, the event of _____ as described seems to reflect a minimal physical challenge. However, the reader is advised that disc herniation is well-known to become symptomatic under such seemingly atraumatic circumstances.

When an injury is asserted to have occurred by way of "aggravation" of a preexisting condition, there must be evidence that there was a preexisting condition and that there was "some enhancement, acceleration, or worsening of the underlying condition. . . ." Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994. The burden of proving that there is a compensable injury or aggravation of a preexisting condition is on the claimant. In this case, while the existence of the preexisting condition was acknowledged, there was no objective evidence of the extent of that injury.

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). Under the facts presented in this case, the hearing officer could conclude that the claimant had sustained a herniated disc in November 1999; that the injury was relatively benign until the claimant bent over on _____; and that the evidence was insufficient to prove that there was a worsening of the claimant's injury despite the onset of increased symptoms.

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). We find the evidence sufficient to support the determinations of the hearing officer and we will not substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The hearing officer found that the claimant did not prove that she had sustained a compensable injury in the form of an aggravation of a preexisting condition and we affirm that determination. Section 401.011(16) of the 1989 Act defines disability as the inability to obtain and retain employment at wages equivalent to the preinjury wage as the result of a compensable injury. Since we affirm the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability.

Finding no reversible error, we affirm the decision and order of the hearing officer.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge