APPEAL NO. 002255

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 on August 25, 2000. The hearing officer determined that the respondent (claimant) sustained a lumbar injury in the course and scope of his employment on _____; that the claimant reported his injury to the employer that day; that the claimant did not have disability from December 17, 1999, through May 18, 2000; and that the claimant did have disability from May 18, 2000, through the date of the CCH. The appellant (self-insured) appealed; stated evidence favorable to its position; contended that the determinations of the hearing officer are not supported by credible evidence; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant was not injured in the course and scope of his employment on _____, did not timely report an injury to the employer, and did not have disability. Neither a response from the claimant nor an appeal by him of the determinations concerning disability has been received.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. The hearing officer made 44 findings of fact, including some that state what is in medical reports and are considered a part of the statement of the evidence. Only a brief summary of the evidence will be included in this decision. The claimant testified that on _____, he injured his back lifting a box that weighed about 53 pounds; that on that same day he told his supervisor that he had injured his back at work; that his supervisor placed him on light duty; that on December 1, 1999, he met with his supervisor, his supervisor's supervisor Mr. M, a person from human resources, and some other people; that he does not speak English, and that only one other person in the room spoke Spanish; that he told them about hurting his back; that he was sent to the clinic that he went to for a physical examination before he started working for the employer; that he was released to return to work with restrictions; that he returned to work; that he worked until December 15, 1999; that he had wanted to change shifts so that he could work the day shift; that he was told to quit his job and apply for the day shift; and that he did so and was not hired for the day shift.

On June 20, 2000, the claimant's supervisor, Mr. M, and an office worker of the employer made written statements. The supervisor stated that in late November 1999, the claimant gave notice that he was going to quit; that the first time the claimant told him he was injured was on December 1, 1999; that on that day the claimant brought him a work-status report saying he was placed on limited duty due to a _____, injury; and that the claimant told him that he did not know how or exactly when he had been injured, but that he had been hurting for about two weeks. Mr. M said that the claimant had given notice of intent to quit working before the December 1, 1999, meeting; that the claimant said he

did not know how he had hurt himself; and that the claimant worked on light duty until December 16, 1999. The other employee's statement is consistent with that of Mr. M.

The claimant testified that he worked light duty for a floral company for about two weeks in February 2000 and that he quit working there because his hours were reduced. He said that he worked for another employer for about six weeks and that he had to stop working for that employer even though the work was not heavy because of his back pain related to the _____, injury. The claimant had admitted into evidence a document from an employer showing that on May 18, 2000, he was paid for a period ending May 14, 2000. The claimant moved to another city and on July 31, 2000, the Texas Workers' Compensation Commission approved a change of treating doctors to Dr. C, a chiropractor. Dr. C began treating the claimant on August 7, 2000, and took the claimant off work until further notice because of the November 1999 injury.

The burden is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment, Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991; that he timely reported the injury to the employer, Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994; and that he had disability, Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993. A claimant may go in and out of periods of disability. Texas Workers' Compensation Commission Appeal No. 91122, decided February 6, 1992. The testimony of the claimant alone may be sufficient to satisfy the burden of proof. Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 1991; Texas Workers' Compensation Commission Appeal No. 94198, decided April 1, 1994. 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 a claim, 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. At the CCH, the self-insured stated that credibility of the witnesses was important in resolving the disputed issues. The hearing officer resolved the conflicts in favor of the claimant. 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 would 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 are 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 those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 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 judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

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

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge