APPEAL NO. 002257

This appeal arises 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 23, 2000. The issues at the CCH were whether the appellant (claimant) had sustained a compensable injury on _____, and if any disability had resulted from the claimed injury. The hearing officer determined that the claimant had not sustained a compensable injury and that there was no disability resulting from the claimed injury. The claimant appealed, urging that the hearing officer's decision was against the great weight of the evidence. The respondent (carrier) replied that the hearing officer's decision was supported by the evidence and should be affirmed.

DECISION

Affirmed.

The claimant testified that he was injured on _____, when he, his son, and another employee moved a heavy pipe. The claimant had consented to a recorded interview on January 25, 2000, and, in that statement, had attributed his injury to moving a number of heavy pipes. In his recorded interview, the claimant stated that his injury had occurred in the morning, he had worked about an hour after the injury, and had then sought medical treatment on the same day. His testimony at the hearing was that he had continued working on the date of injury, had worked two more days, then was off work for several days, returning to work the following Tuesday. On Tuesday, he testified, he worked until about noon, then his son had taken him to a lawyer who referred him to his treating doctor, Dr. C, a chiropractor.

The carrier presented evidence that neither claimant nor any other member of the employer's crew had been involved in lifting and moving heavy pipes on the day of the alleged injury. Mr. H, the claimant's immediate supervisor, testified that a large steel pipe had been moved, but that the entire crew of 10 men, including Mr. H, had moved the pipe and that the pipe was not moved on the date that the claimant alleged he was injured.

There were inconsistencies in the claimant's testimony, his recorded interview, the history of injury given to his doctor, and the evidence presented by the carrier.

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, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). The hearing officer did not find the evidence presented by the claimant to be credible and found that the claimant did not sustain an injury in the course and scope of his employment. 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.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id*. Since we affirm the hearing officer's determination that no compensable injury exists, we likewise affirm the determination that the claimant did not have disability resulting from the claimed injury.

Because the factual determinations of the hearing officer are supported by the evidence presented and there is no reversible error in the record, we affirm the decision and order of the hearing officer.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Kathleen C. Decker
Appeals Judge