

APPEAL NO. 002274

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 was held on August 31, 2000. The hearing officer determined that the appellant (claimant) was not injured in the course and scope of his employment on _____, and that, since he did not sustain a compensable injury, he did not have disability. The claimant appealed, urged that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and requested that the Appeals Panel reverse the decision of the hearing officer. The respondent (carrier) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant testified that he was involved in an automobile accident in October 1999, that Dr. S treated him for that accident, that he mainly injured his shoulder, that he had some stiffness in his back and had his back massaged, and that he recovered from that accident and went to work for the employer. The claimant said that on _____, he reached above his head to get a roll of material that weighed more than 50 pounds; that he pulled on the roll; that he tried to stop the roll and did not just let it drop; that he was thrown back; that he had pain in his lower back; that he did not think it was serious; that he just thought that he had a pulled muscle; that he took pain medication and continued to work; and that he did not want to lose his job and thought he could work his way through it. He testified that he went to the company nurse, Ms. C, on March 20, 2000; that he told her what had happened; that he was given a muscle relaxer by Ms. C; that he asked if there was a company doctor; that he was told that there was not a company doctor and that he should find his own doctor; that he went to Dr. S because he had been treated by him before; and that Dr. S treated him.

Ms. C testified that on March 20, 2000, she asked the claimant if he had been injured at work; that the claimant said that he had no injury; that she gave him some Ibuprofen for the pain; that she reviewed a statement made by the claimant and a report of Dr. S stating what the claimant told Dr. S; and that those documents do not contain information that is close to what the claimant told her.

In a letter dated July 7, 2000, Dr. S stated that the claimant told him that he was bending over to pick up an 85-pound roll of material; that he felt intense pain at his lumbar region; that the claimant reported numbness radiating from the lumbar region to all five toes; that the claimant reported the injury to the company nurse the day it happened; that nerve conduction velocity tests revealed nerve root problems concerning the right lower extremity; and that he, Dr. S, concluded that the injury was the primary traumatic incident that caused the probable lumbar disc protrusion. In a report dated December 15, 1999,

Dr. S said that as a result of the automobile accident, the claimant had low back pain with radiation into the right leg.

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. 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. 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 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). 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 determination that the claimant was not injured in the course and scope of his employment on _____, is 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 that determination. 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 that determination of the hearing officer, we will not substitute our judgment 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 have found the evidence to be sufficient to support the determination that the claimant did not sustain a compensable injury, the claimant cannot have disability.

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

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge