

## APPEAL NO. 002278

Following a contested case hearing held on August 30, 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) had not sustained a compensable injury on \_\_\_\_\_, and did not have disability resulting from the claimed injury. The claimant appealed, asserting that the decision of the hearing officer was incorrect. We treat the claimant's appeal as an appeal based upon insufficiency of the evidence. The respondent (carrier) responded that the decision was supported by the evidence and should be affirmed.

### DECISION

Affirmed.

The claimant testified that she had injured her left leg, ankle, and low back when she slipped on rocks as she was returning to her workstation after lunch on \_\_\_\_\_. The claimant and Ms. Mc, a friend, testified that Ms. Mc had called Ms. M, the employer's personnel manager, to report the injury on April 17 and April 18. The claimant testified that she had also called Ms. M on April 19, 2000, to report the injury. According to the claimant, she was advised through Ms. Mc that she should not come back to work because the job was ending soon and the claimant would be responsible for any medical treatment.

The claimant and Ms. Mc's testimony was contradicted by Ms. M. Ms. M testified that she had not been advised of an injury and that the first time she learned that the claimant had claimed an injury was on April 19, 2000, when a person who identified herself as the claimant's mother called and advised that the claimant had injured her leg when she stepped into a hole in the yard. Ms. M testified that the claimant neither reported to work nor called on April 15, 16, 17, or 18, 2000, and was terminated on April 18, 2000, because she had missed four consecutive days of work without notifying the employer that she would not be at work on any of those days.

Conflicting evidence was presented at the hearing. 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). 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.

The decision and order of the hearing officer are affirmed.

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Kenneth A. Huchton  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Judy L. Stephens  
Appeals Judge