APPEAL NO. 002316

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 12, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appealed the hearing officer's determinations, asserting that they were against the great weight of the evidence and further asserting error in the hearing officer's failure to make findings on the defensive issue of an alleged self-inflicted injury. The respondent (carrier) replies that the hearing officer's determinations are supported by the evidence and should be affirmed.

DECISION

The decision and order of the hearing officer are affirmed.

The claimant worked for (employer) and asserted that she had sustained a broken ankle in a slip-and-fall accident as she was going down a hall to get a fresh apron. The claimant asserted that she had disability resulting from the injury beginning on September 8, 1999, and continuing through January 9, 2000.

Conflicting evidence was adduced at the hearing. The carrier asserted that the claimant's injury did not occur in the course and scope of her employment and that the injury was self-inflicted. The claimant testified that she had stepped on a ceiling tile or piece of sheet rock laying in the hall and had twisted her ankle, resulting in a fall and broken ankle. The carrier presented the testimony of employer's safety manager who testified that he had investigated the incident and had found no evidence of anything in the floor at or near the site of the alleged slip-and-fall.

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).

The claimant's appeal asserted that the hearing officer had committed reversible error in failing to make findings of fact on the carrier's theory that the claimant's injury had been self-inflicted. Just as the hearing officer is not bound by the testimony of any witness, he is not obligated to accept the theory of recovery, or defense, offered by the parties. The carrier had disputed the claim, asserting that the claimant had not sustained an injury in the course and scope of employment and, alternatively, that the claimant's injury was self-inflicted. The hearing officer did not find that the claimant's injury was self-inflicted, evidently rejecting that theory as unproven by the evidence before him. However, he was not limited to determining the facts of the case only on the basis of that theory. The hearing officer found that the claimant's injury was not sustained in the course and scope of her employment. To be compensable, an injury must be sustained in the course and scope of employment. Section 401.011(10). 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 his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Finding no reversible error in the record and sufficient evidence to support the determinations of the hearing officer, the decision and order of the hearing officer is affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge