APPEAL NO. 002319

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 September 12, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) had not sustained a low back injury on _____ (all dates are 2000 unless otherwise stated), and that the claimant had not had disability.

The claimant appealed, emphasizing his testimony alleging an injury and asserting disability from May 18 through September 13. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a machine operator working the third shift (10:00 p.m. to 6:00 a.m.). The claimant testified that on the morning of _____, he injured his low back feeding a large sheet of cardboard into a cardboard cutting machine. The claimant said that he felt a "cramp." There was considerable testimony regarding how the machine worked and the mechanics of the claimant's alleged injury at the CCH. The claimant was being assisted by a coworker who testified at the CCH that he was working right next to the claimant and no injury occurred, that the claimant did not say that he had injured himself, and that the claimant did not exhibit any outward signs of an injury. The claimant testified that he finished his shift, that his back cramp got worse, and that he sought medical care from Dr. A, a chiropractor.

Dr. A, in a report of a visit on May 18, recites a history of a repetitive trauma injury and diagnoses an acute and severe lumbar sprain/strain. The claimant's testimony indicates a specific injury. There are several off-work slips taking the claimant off work.

The carrier contends that this is a retaliation claim, that the claimant had received an oral warning about poor job performance on January 5, and two written warnings on May 12 and May 16, the week prior to the claimed injury. The carrier also presented evidence and testimony that the claimant was unhappy about being reassigned to the third shift and that the claimant believed he had seniority over another employee who had been assigned to the first shift.

In summary, the evidence whether the claimant sustained an injury as he testified is in conflict and paramount to this case is the claimant's credibility. 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. 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). 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, 224 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.

In that we are affirming the hearing officer's decision that the claimant had not sustained a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. King, *supra*. We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge