APPEAL NO. 002355

Following a contested case hearing held on May 26, 2000, and closing on August 29, 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) did not sustain a compensable injury on _____; did not give timely notice of the claimed injury to his employer; and did not have disability. The claimant appealed the hearing officer's decision and order, asserting that the hearing officer's determinations were against the great weight and preponderance of the evidence. The claimant requested that the hearing officer's decision and order be reversed and that a new decision be rendered in his favor. The respondent (carrier) responded that the hearing officer's decision was supported by the evidence and should be affirmed.

DECISION

Affirmed.

The claimant asserted at the hearing that he had sustained a low back injury on _____, when he and two coworkers were moving a large conference table up the stairs to a new office. The claimant asserted that he had given notice of the injury to Mr. R the day of the accident. Mr. R was acknowledged to be a lead man for (employer). The claimant testified that Mr. R advised him that he had conveyed the notice of injury to Ms. R and to Mr. T. Mr. T is the employer's owner.

Both Mr. T and Ms. R denied that they had been given any notice of an alleged injury of _____, until September 27, 1999. Both witnesses also testified that neither the claimant nor Mr. R were moving any furniture on _____. Both witnesses testified that all of the employer's furniture had been moved on the weekend before _____. Mr. T also testified that elevators were used to move the furniture from the seventh floor of one building to the eighth floor of another and that it would have been impossible to move the conference table up and down the stairs because of its size.

There was also conflicting evidence of when the claimant began working for the employer and the circumstances surrounding his employment. The claimant testified that Ms. R, his neighbor, suggested that he apply for a job with the employer. The claimant testified that he went to the employer on August 19, 1999; filled out an application; went for a drug test; and then started working for employer on August 20, 1999. Both Mr. T and Ms. R testified that the claimant came in to fill out an application with (the construction company) on August 19, 1999, went for a drug test, but was not hired to work for the construction company because he did not complete the drug test. That testimony is supported by the claimant's job application and a report from the laboratory. Mr. T testified that he later offered the claimant a job with the employer, but that the claimant did not begin working for the employer until _____. The claimant testified that he had worked for the employer on August 20, 1999, and had been paid for the single day several weeks afterward. The claimant initially testified that he was paid for August 20, 1999, along with the pay for a 40-hour week after the week of _____, but when confronted

with the fact that after his first week of employment he had not worked any 40-hour weeks, the claimant retracted that testimony and stated that he had been paid on a separate check for August 20, 1999, by Mr. T's daughter. There was no substantiation of that testimony.

The hearing officer noted that there were no objective tests to support the claimant's assertion that he had sustained a low back injury with radiation into both legs. There was no objective evidence of encroachment on any of the lumbar nerves by either a bulging or herniated disc and the hearing officer could have considered that as an anomaly when gauging 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. The hearing officer did so and concluded that the claimant was not credible and the medical reports, which were dependent on the claimant's subjective reports to the doctors, did not establish the existence of an injury. 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.

A compensable injury must exist before there can be disability. Section 401.011(16). The hearing officer's finding that there was no disability in this matter is supported by the evidence and the hearing officer's threshold determination that there is no compensable injury.

The claimant asserts that the hearing officer erred in finding that he did not give the employer notice of the injury within 30 days of the date of injury and that he did not have good cause for failing to give notice within the time required by law. In support of this assertion, the claimant calls our attention to his testimony and a statement from Ms. J. The carrier responded that Ms. J's statement does not, as asserted by the claimant, give clear evidence that the claimant reported the injury to Ms. R. That statement, in pertinent part, states:

> [Ms. J] knows that [the claimant] advised [Ms. R] that he was injured on the weekend following _____, which would have been either _____, or _____. [Ms. J] says that she heard [the claimant] was injured on _____ when moving furniture from [the employer's] prior office to their new location. [Ms. J] says that [Mr. T], owner of [the employer], paid [Mr. R] $80.00 to move furniture from one office to the other. She says that [Mr. R] split the money with [the claimant] but she believes this occurred on _____ and [the claimant] was not hired until _____.

The foregoing statement and the hearing officer's determination that the claimant did not sustain an injury on _____, are not mutually exclusive. We note that the claimant's reporting of an injury to Mr. T, Ms. R, Ms. J, or any other person does not necessarily mean that an injury existed. Nor does the foregoing statement clearly state that the claimant reported an injury within 30 days. The resolution of any conflict, and the weight and credibility to be afforded the summary and Ms. J's knowledge, was the province of the hearing officer as fact finder.

The hearing officer's decision and order are supported by the evidence and are, therefore, affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge