

APPEAL NO. 002376

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 11, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) had not sustained a compensable lumbar spine injury on \_\_\_\_\_ (all dates are 2000 unless otherwise noted), and that the claimant did not have disability.

The claimant appeals, contending that her medical evidence and the findings at another CCH which refer to a subsequent "flare up" of this injury, establish that she sustained an injury on \_\_\_\_\_ and that she has had disability from February 4 to April 5. The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a computer clerk by the self-insured. The claimant testified that on \_\_\_\_\_, as she was reaching for a binder, she experienced a "burning pain" in her low back. The claimant sought treatment with Dr. K, who in a report dated January 26, noted the reaching incident and diagnosed "mechanical low back strain with underlying degenerative changes." The claimant was released to return to work with "no reaching overhead." In a report dated February 4, Dr. K noted that the claimant had experienced a very severe and sharp burning sensation on \_\_\_\_\_ "putting back a binder at school." Dr. K took the claimant off work February 4.<sup>1</sup> An MRI performed on March 13 had an impression of "degenerative disk disease. Degenerative osteoarthritis with minimal spinal stenosis at L2-3." In conflict was whether the claimant had had prior back complaints.

The claimant's supervisor, Mr. M, testified that the claimant had been reprimanded for poor work performance only a few hours before the claimed \_\_\_\_\_ injury and that the claimant had also been reprimanded on \_\_\_\_\_, before her claimed injury on that date. (That written reprimand is in evidence.) The self-insured contends that the claims were made in retaliation for the reprimands.

The hearing officer commented that he found Mr. M's testimony credible and that, based on the credible evidence and testimony, the claimant had failed to meet her burden of proof. The claimant contends that her testimony and the medical reports establish her injury and disability.

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<sup>1</sup>The claimant had made a claim for the \_\_\_\_\_ incident which was adjudicated at a CCH on June 8. In that decision, a hearing officer found that the claimant had "experienced a flare-up of symptoms from her \_\_\_\_\_ compensable injury." That decision was apparently not appealed; however, the issue in that case was whether the claimant had sustained a compensable injury on \_\_\_\_\_ and the hearing officer had found that she had not.

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 regard to the medical evidence, we have also noted many times that a fact finder is not bound by the testimony (or evidence) of a medical witness where the credibility of that testimony (or evidence) is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). In this case, the hearing officer simply was not persuaded by the claimant's testimony. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool, *supra*.

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

Accordingly, the hearing officer's decision and order are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Judy L. Stephens  
Appeals Judge