

APPEAL NO. 002387

Following a contested case hearing held on September 18, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the appellant (claimant) had not sustained a compensable injury on _____, and had not had disability resulting from the claimed injury. The claimant appealed, asserting that the hearing officer's decision was against the great weight and preponderance of the evidence. The respondent (carrier) responded that the hearing officer's decision was supported by the evidence and the decision and order should be affirmed.

DECISION

Affirmed.

The claimant testified that he sustained a low back injury while unloading a package cart on _____, in the course and scope of his employment for (employer). At the time of the alleged injury, the claimant had been participating in a transitional work program at the employer for approximately six weeks. Several days after the alleged injury, and approximately three weeks before the claimant reported the alleged low back injury to the employer, the claimant was advised by the employer that he was being removed from the transitional work program and would need to obtain a full-duty release before he would be allowed to return to work in any capacity. It is noted that there was evidence that the claimant had sustained a prior low back injury in 1993 which manifested itself with radicular pain into the right leg, had undergone conservative treatment for that injury, and had ultimately been released to full duty well before the date of the alleged low back injury made the subject of this claim.

The unique circumstances of this case make the hearing officer's evaluation of the claimant's credibility quite important. After hearing all of the evidence and reviewing all of the records offered and admitted, the hearing officer found that the claimant was not credible, that the medical records offered did not contain histories consistent with the claimant's testimony of what was told to the doctors nearest the alleged date of injury, and that the claimant had not sustained a compensable injury on _____. It is undisputed that the claimant has a small disc herniation at L5-S1, but the hearing officer was not persuaded by the claimant's testimony that the injury was the result of his employment on _____.

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, evidence which necessarily relies on the history of injury contained in medical records. See Texas Workers' Compensation Commission Appeal No. 992542, decided December 29, 1999 (Unpublished). 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.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge