

APPEAL NO. 002409

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 19, 2000. The hearing officer determined that the claimant's compensable injury did not include an injury to the lower back. The appellant (claimant) appealed on the grounds of sufficiency of the evidence. The respondent (carrier) filed a response urging that the evidence was sufficient to support the hearing officer's decision and order and that it be affirmed.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. At the CCH the claimant contended that his compensable left knee injury which had been accepted by the carrier also included an injury to his lower back. At the CCH the claimant offered four theories of recovery: (1) that he injured his lower back during the same incident in which he injured his left knee; (2) that his knee gave way the next day on \_\_\_\_\_, causing him to fall against a wall injuring his back; (3) that while at home in September 1997, his knee gave way causing him to injure his back; and, (4) that the medical treatment he received to treat his left knee injury caused him to alter his gait and injure his lower back. On appeal the claimant restricted his argument to only the first two methods; that he either injured the back at the same time he injured his knee or that when he fell the next day he injured his back. Therefore, we will not address the remaining two theories propounded by the claimant at the CCH as he did not assert them on appeal.

The claimant testified that he worked as a care worker for the employer taking care of inmates at a correctional facility. On \_\_\_\_\_, the claimant became involved with a juvenile inmate who kicked him in the left knee causing him to fall to the ground. He explained that the inmate, and a guard who was assisting, then fell on top of him. Afterwards, with assistance, the claimant escorted the inmate back to security and he subsequently went home. The following morning the claimant returned to work. The claimant testified that after work he was walking across a wet floor in the intake area and his knee gave out on him causing him to fall to the floor hitting his back. The claimant admitted he did not advise the employer that he sustained a back injury, only that he had hurt his knee. He thereafter drove himself to the hospital where he was admitted and underwent left ACL reconstruction surgery. The claimant contended that he had had back pain since July 7, 1997, but admitted that he did not seek medical treatment for the back until September 26, 1997, after an incident at home using a walker.

Dr. S testified on behalf of the carrier. He testified that he evaluated the claimant on October 29, 1999, and opined that any low back problems experienced by the claimant were not related to the \_\_\_\_\_, knee injury. Dr. S opined that degenerative

changes could be the reason for the claimant's back pain, but that there really were no objective criteria to substantiate the claimant's subjective accounts of pain. He denied that a change in the claimant's gait could cause the lower back problems.

Dr. E examined the claimant on November 17, 1999. Dr. E opined that the cause of the claimant's discomfort in his back was a result of the treatments that were performed to take care of the original injury to his knee. He noted that the original injury was not the cause of the current back pain, but that the claimant's abnormal gait pattern could cause his back pain.

Progress notes from Dr. St reflect that the claimant did not have complaints of low back pain until he presented on September 26, 1997. Dr. St noted that the claimant had returned home the previous week after a second surgery to his knee. The claimant reported to Dr. St that he had experienced low back pain "when he turned funny in the kitchen, felt something slip in his back a little bit. He has been having a lot of discomfort since then."

The hearing officer wrote in her Statement of the Evidence that the claimant failed to show by a preponderance of the evidence that he injured his low back either on \_\_\_\_\_, or \_\_\_\_\_, because there was no support in either the testimony or medical evidence for either of the two theories.

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 hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the hearing officer's decision and order.

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Kathleen C. Decker  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge