APPEAL NO. 002663

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On October 25, 2000, a hearing was held. The hearing officer decided that the respondent (claimant) sustained a compensable injury on _____, that extended to and included the development of gangrene in the right foot and that the claimant had disability resulting from the compensable injury from December 26, 1999, through the date of the hearing. The appellant (carrier) appealed, asserting that the claimant had failed to establish a causal connection between his injury on _____, and the development of gangrene in the right foot by reasonable medical probability. There was no response found in the file from the claimant.

DECISION

Affirmed.

The claimant worked as an insert machine operator and on _____, twisted his right ankle and cut the fourth toe of the right foot as he was setting up two machines. He reported the twisted ankle to his supervisor and finished his shift that day and worked four hours the next day.

On the evening of December 25, 1999, the claimant, a diabetic, became concerned about the cut on the fourth toe of his right foot. The toe had become increasingly red and the redness had spread to the remainder of the claimant's right foot. The claimant went to the emergency room, was examined, and was admitted to the hospital with a diagnosis of gangrene of the fourth toe. The gangrene did not respond to conservative treatment and spread to the remainder of the claimant's right foot. Eventually, the claimant's right leg below the knee was amputated due to the gangrene. The carrier asserts that the claimant has failed to prove, within reasonable medical probability, that the gangrene was a result of the compensable injury and not an unrelated result of the claimant's diabetes.

In support of his contention that the gangrene in his right foot was a result of the compensable injury, the claimant offered several letters from Dr. M, his treating doctor. In letters dated April 11, 2000, and May 25, 2000, Dr. M states that the claimant gave a history of having twisted his right foot on the job a few days before first having been seen by Dr. M. In the May 25, 2000, letter Dr. M then opined that the on-the-job injury was complicated by the claimant's diabetes which led to the development of gangrene and the eventual amputation. Dr. M reaffirmed his opinion in his October 10, 2000, responses to written questions by the carrier.

The carrier points to the opinion of another of the claimant's attending physicians, Dr. Mu, who was present while the claimant was hospitalized for the gangrene of his right foot, that fails to implicate the accident at work in the development of gangrene, asserting instead that the claimant's uncontrolled diabetes was the cause of the gangrene. The carrier also offered into evidence articles on the problems which can afflict individuals with diabetes.

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). 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).

The hearing officer apparently believed that Dr. M's opinion, although short and to the point, was based upon reasonable medical probability. It is noted that the claimant's situation is not totally unique, as evidenced by the decision on appeal tendered by the claimant into evidence. 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 regarding the extent of the claimant's injury, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). The determination as to an employee's disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992. Since the claimant's disability in this matter depends on the determination of the extent of injury, and since we affirm the hearing officer's decision on the extent of the claimant's injury, we also affirm the hearing officer's decision regarding disability in this matter.

The decision and order of the hearing officer are affirmed.

_____
Kenneth A. Huchton
Appeals Judge

CONCUR:

_____
Kathleen C. Decker
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge