APPEAL NO. 002737

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was commenced on October 12, 2000, and concluded on October 26, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) had not sustained a compensable injury on or about either _____ (all dates are 2000 unless otherwise noted), or _____; that the claimant failed to give timely notice of her alleged injury to the employer and did not have good cause for failing to do so; and that the claimant did not have disability.

The claimant appeals, basically on a sufficiency of the evidence basis, emphasizing evidence in support of her position on all the issues. The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Much, if not most, of the evidence is in conflict. The claimant was employed as a licensed vocational nurse by the employer facility. The claimant testified that she injured her low back transferring a patient from a wheelchair to a hospital bed. The claimant initially asserted the date of injury to be January 28, but subsequently, after getting her personnel records, said the date of injury was _____. The claimant went to a hospital emergency room (ER) on _____ and the ER record recites a history of the claimant injuring her back "lifting pts [at employer] x 2 days." The claimant said she initially thought she had a kidney infection. The ER doctor took the claimant off work for three days. On February 7 the claimant went to the employer's premises. What was said to whom and when is in total conflict. The claimant said she reported a work injury to Ms. B, her nursing supervisor, and Ms. C, the employer's human resources representative, and she was told she could not file a workers' compensation claim because she had not reported an injury within 24 hours. The claimant's testimony is somewhat supported by her mother's testimony, who said she overheard the claimant report her injury (and denied workers' compensation) when she accompanied the claimant on February 7. Ms. B and Ms. C deny the claimant's allegations and say that the claimant presented the off-work slip (without the ER history), saying either she had a kidney infection or hurt her back riding a motorcycle (denied by the claimant). Also in dispute is whether Ms. B was even on the premises when the claimant says she reported her injury.

The claimant subsequently began treating with Dr. D, who, in a report of a February 14 visit, makes no mention of a work injury and only comments that the claimant said "she was seen . . . as a possible kidney infection by her primary care doc." Dr. D's initial diagnosis of herniated disc at L5-S1 was subsequently changed after an MRI to "myofascial pain syndrome."

The evidence on nearly all of the key points was in conflict. 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 judgment 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 judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge