APPEAL NO. 002812

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 17, 2000, a hearing was held. The hearing officer decided that the respondent (claimant) sustained an injury in the form of bilateral avascular necrosis of the hips in addition to an injury to his right heel on _____. The appellant (carrier) appealed, asserting that the hearing officer's decision was against the great weight and preponderance of the evidence. There is no response in the appeal file from the claimant.

DECISION

We affirm.

The claimant sustained an uncontroverted injury to his right heel when he fell from a ladder on _____, sustaining a comminuted intraarticular fracture of his right calcaneus. Approximately a year later, in early September 1999, the claimant experienced severe hip pain. He was examined and an MRI revealed the presence of bilateral avascular necrosis in his hips.

There was conflicting medical evidence presented at the hearing. The claimant's treating doctor for the fractured calcaneus stated his opinion that the claimant had sustained a major trauma to both legs in the fall and that the trauma resulted in the avascular necrosis. The carrier presented the opinion of Dr. F, a physician who is board certified in emergency medicine. Dr. F opined that the claimant's avascular necrosis was not a result of the fall. Dr. F's opinion was based upon the delayed presentation of pain and medical records which indicated that the stress from the fall was to the right heel.

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). 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, 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 his. 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:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge