APPEAL NO. 002833

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 21, 2000, a hearing was held. The hearing officer decided that the appellant's (claimant) right shoulder impingement is not a result of the compensable injury of _____, and that the claimant did not have disability resulting from the _____, compensable injury. The claimant appealed, asserting that the hearing officer's decision is against the great weight of the evidence and should be reversed and a new decision rendered in his favor. The respondent (carrier) responded that the hearing officer's decision is not against the great weight of the evidence and should be affirmed.

DECISION

We affirm.

The claimant sustained an uncontroverted compensable injury on _____. The claimant described the injury as occurring when a coworker threw a box of liquor bottles to him. The claimant stated that he tried to catch the box, it slipped from his hands, and he fell down and injured his right shoulder. The claimant asserts that the hearing officer's determination that the _____, injury is not a cause of his current shoulder impingement is against the great weight of the evidence, asserting that the opinion of Dr. H, a doctor selected by the Texas Workers' Compensation Commission to give an opinion on the causation of the claimant's shoulder impingement, was improperly discounted by the hearing officer because the "lack of proof of any additional injury . . . to the right shoulder . . . indicate[s] that the injury of _____, and current impingement are one in the same."

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. The hearing officer noted significant inconsistencies in the claimant's testimony and medical records regarding histories of additional injuries to the right shoulder between _____, and

the date of the examination by Dr. H. The hearing officer also noted inconsistencies in other testimony offered by the claimant, including his testimony that he had not worked for any employer between March 1, 2000, and May 4, 2000, and his almost immediate retraction of that testimony when confronted with evidence that he had obtained employment on April 4, 2000. It is noted that the claimant admitted that he had worked every day from April 3, 2000, through May 4, 2000, when faced with the evidence of his employment during the time he claimed he had disability.

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). Where an expert's opinion is based on assumed facts (or lack of pertinent facts) that differ materially from the actual, undisputed facts, the opinion lacks probative value. *See* Texas Workers' Compensation Commission Appeal No. 982649, decided December 23, 1998, citing Burroughs Wellcome Company v. Crye, 907 S.W.2d 497 (Tex. 1995). The hearing officer could properly evaluate the claimant's credibility in determining the weight and credibility to be assigned to the opinions of the expert witnesses in this case. 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). The determinations of the hearing officer are not so against the great weight of the evidence as to be clearly wrong or manifestly unjust and 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:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge