APPEAL NO. 002865

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 13, 2000, a hearing was held. The hearing officer decided that the appellant's (claimant) lower back injury and bilateral carpal tunnel syndrome (CTS) injuries were neither caused by nor aggravated by the compensable injury of _____. The claimant appealed, asserting that the hearing officer was biased in favor of the respondent (carrier) and that the hearing officer's decision was against the great weight of the evidence. There is no response in the file from the carrier.

DECISION

Affirmed.

We briefly address the claimant's assertion that the hearing officer was biased in favor of the carrier. After carefully reviewing the record, we cannot agree that the hearing officer's decision in this instance was the product of bias or prejudice. Rather, we believe that his determinations were the result of his resolving the conflicts and inconsistencies in the evidence and assessing credibility. While the hearing officer may have expressed some personal opinions on the record, a practice we would caution hearing officers to avoid in the future, we are satisfied that such does not rise to the level of indicating advocacy on behalf of or bias in favor of the carrier in this matter.

The hearing officer, in his statement of the evidence, states that the claimant was injured on _____, when a cabinet slipped and struck him on the head, neck, and shoulders. The hearing officer states that the claimant performed his usual and customary duties from_____ through March 28, 1999, and did not seek medical treatment until March 28, 1999. The hearing officer comments that the mechanism of injury, as described by the claimant, was not sufficient to support a bilateral carpal tunnel injury, that the medical evidence regarding the cause of the bilateral carpal tunnel injury was conclusory and not persuasive, and that the evidence was not sufficient to establish a causal connection between the _____, injury and the bilateral CTS.

The hearing officer also stated that the evidence was insufficient to establish that the original injury affected the claimant's lower back. The hearing officer reviewed documents that had been admitted into evidence, including segments of the deposition on written questions of Dr. G and a June 7, 2000, report from Dr. Gr. The hearing officer noted that in his deposition on written questions, Dr. G identified injuries to the claimant's cervical spine, arms, head, and hands, but only mentioned the alleged lumbar injury in response to a question which asked if Dr. G "believed that [the claimant] sustained an injury to his lumbar spine as a result of his work related injury on _____?" The hearing officer noted that in his examination of the claimant on June 7, 2000, Dr. Gr stated that there was no tenderness to palpation over the claimant's lumbar spine, no trigger points, and no muscle spasms.

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 the evidence presented or substitute its own judgement for that of the trier of fact even though 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 deemed credible by the hearing officer to be sufficient to support his determinations, 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:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge