APPEAL NO. 002959

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 7, 2000. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____, and did not have disability.

The claimant appealed, contending that he sustained cervical, thoracic, and lumbar spine injuries as well as left leg injuries in a fall and that he had disability from July 14, 1999, to the date of the CCH as evidenced by several doctor's reports. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a cook and testified that on _____, he sustained the claimed injuries when he went to a freezer located in the back of the restaurant, slipped in some ice or water, fell, hitting his back and neck on a wooden pallet. The fall was unwitnessed and there are various somewhat inconsistent versions of what happened in evidence (i.e. how the claimant fell, whether or not he twisted his back, and whether the claimant actually fell to the floor.) The hearing officer commented that the claimant's "testimony was not credible." The various doctor's reports that give an opinion on causation are dependent on the claimant's history of a slip and fall.

Rather clearly, the hearing officer did not find the claimant credible and was not persuaded by medical reports which were based largely on the history the claimant gave the doctor. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. A fact finder is not bound by the testimony (or evidence) of a medical witness where the credibility of that testimony (or evidence) is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate-level body is not a fact finder and 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 would support a different result. Appeal No. 950084, *supra*. When reviewing the factual sufficiency of the evidence, we should set aside the decision of the hearing officer only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Appeal No. 950084. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Because we are affirming the hearing officer's decision that the claimant did not have a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge