APPEAL NO. 010548

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 January 31, 2001. The hearing officer decided that the appellant (claimant) had disability from August 9, 2000, through October 3, 2000. The claimant has appealed this decision, arguing that the disability continued up to the date of the CCH, and that the hearing officer erred in equating an offer of "light duty" with the end of disability. The respondent (carrier) has not responded to the appeal.

DECISION

Affirmed.

At a previous CCH held on August 8, 2000, it was determined that the claimant sustained a compensable injury to his left knee and had disability from March 16, 2000, through July 12, 2000. We affirmed the decision of the hearing officer in Texas Workers' Compensation Commission Appeal No. 002251, decided November 8, 2000. There is evidence from which the hearing officer could determine that the claimant was off work from the day after the previous CCH until October 4, 2000; that the claimant returned to light-duty work on that date with restrictions; that the claimant thereafter self-limited his hours of work; and that the claimant subsequently resigned voluntarily from his job. We note that there was a Work Status Report form (TWCC-73) which took the claimant off work as of October 31, 2000, and another TWCC-73 returning him to work on November 9, 2000. There was considerable discussion on the record about whether the "light duty" was pursuant to a bona fide offer of employment, but that was not an issue at the benefit review conference and the hearing officer properly refused to consider it as an issue at the CCH. Section 410.151(b).

The hearing officer is the trier of fact and 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). A finding of disability may be based upon the testimony of the claimant alone but, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). The evidence of disability after October 3, 2000, was based upon the claimant's subjective complaints and was affected by the claimant's credibility. In the present case, the hearing officer found no disability after October 3, 2000, contrary to the testimony of the claimant. The claimant had the burden to prove that he suffered disability. Texas Workers' Compensation Commission Appeal No. 91122, decided February 6, 1992. We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden. This is so even though another fact finder might draw other inferences and reach other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

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, 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 judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge