

APPEAL NO. 010899

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 4, 2001. The hearing officer resolved the two disputed issues by deciding that the appellant (claimant) did not sustain an injury in the course and scope of her employment and did not have disability as a result of the claimed injury of _____. The claimant has appealed the hearing officer's decision and the respondent (carrier) urges affirmance.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in finding that the claimant did not sustain a compensable injury in the course and scope of employment and did not have disability as a result of the claimed injury of _____. The hearing officer found that the claimant has an ordinary disease of life in her back in the form of degenerative disc disease.

The burden is on the claimant to prove by a preponderance of the evidence that an injury occurred in the course and scope of employment (Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991), and that she had disability, Texas Workers' Compensation Commission Appeal No. 93953, decided December 7, 1993. The testimony of the claimant alone may be sufficient to satisfy the burden of proof. Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 1991. The claimant testified that she injured her back when she lifted a tray containing scanners weighing over 15 pounds and turned her body around to place the tray on a table. The claimant testified that she felt a sharp pain in her back. While a claimant's testimony alone may be sufficient to prove a claim, 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 hearing officer found the claimant's testimony unpersuasive.

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 because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the evidence. 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). The medical evidence supports the hearing officer's determination that the claimant has an ordinary disease of life in the form of disc desiccation and diminished craniocaudal height. The medical evidence also shows that on _____, the claimant was admitted to the hospital for abdominal pains, not back pains.

The Appeals Panel will not substitute its own judgment for that of the trier of fact even if the evidence would 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 are so against the great weight and preponderance of the evidence as to be clearly wrong or 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 Co., 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.

The hearing officer's decision is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge