APPEAL NO. 020717
FILED MAY 1, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case returns to us following our decision in Texas Workers' Compensation Commission Appeal No. 012649, decided December 20, 2001, which remanded for the respondent (carrier) to comply with HB 2600 amending Section 410.164, effective June 17, 2001. A contested case hearing was convened by the hearing officer on April 12, 2001. The hearing was continued to August 31, 2001, when it was concluded. The hearing officer closed the record on remand on February 19, 2002, and on March 1, 2002, issued her remand decision which once again determined that the appellant (claimant) did not sustain a compensable injury; that the claimant did not have disability; and that the carrier did not waive the right to contest the compensability of the claimed injury. The claimant has again appealed the injury and disability determinations on evidentiary sufficiency grounds and the carrier waiver determination based on the decision in Downs v. Continental Casualty Co., 32 S.W.3d 260 (Tex. App.-San Antonio 2000, pet. granted). The carrier has responded, urging our affirmance.

DECISION

Affirmed.

The claimant testified that on _____, while he was working on the air filter of his employer's truck, the hood of the truck fell on him; that he yelled for help and when none came, he freed himself; and that he sustained injuries to his head, neck, right shoulder, and back. The employer's general superintendent testified that on _____, he was watching the claimant do the maintenance on the truck; that he neither observed an accident nor heard the claimant yell for help; that the hood of the truck the claimant was working on had a locking device to keep it open; and that it requires a substantial amount of force to close the hood.

The hearing officer determined that the claimant was not credible. 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. 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 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 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). 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 determination. 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 judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. Because the hearing officer's determination that the claimant did not sustain a compensable injury is affirmed, we necessarily affirm the determination of no disability.

The hearing officer did not err in determining that the carrier timely contested the claim. On appeal, the claimant asserts that because the carrier neither paid nor disputed the claim within seven days, they have waived their right to dispute it under the Downs decision. The Texas Workers' Compensation Commission is not applying the decision in Downs, regarding a seven-day dispute period, pending continued legal action on the case. *See* Texas Workers' Compensation Commission Appeal No. 012795, decided February 4, 2002, and Texas Workers' Compensation Commission Advisory 2001-02.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CASUALTY RECIPROCAL EXCHANGE** and the name and address of its registered agent for service of process is

FRED S. STRADLEY
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DALLAS, TX 75243.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge