APPEAL NO. 950281

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held in (city), Texas, on January 18, 1995, with (hearing officer) presiding as hearing officer. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on (date of injury); that the claimant timely reported the injury to her employer; and that the claimant has had disability since May 12, 1994. The appellant (self-insured) requested review urging that the determinations of the hearing officer are against the great weight and preponderance of the evidence. The claimant responded asking that we affirm the decision of the hearing officer.

DECISION

We affirm.

The claimant testified that she worked as a nurse at a prison. She said that each week she was required to ask each inmate if he had any medical problems. She said that on (date of injury), the inmates had flooded a part of the prison, and as she was making rounds with a security guard, she slipped and fell on her buttocks with her legs in front of her. She said that she finished her rounds and reported to (Ms. W) that she had slipped and fallen. The claimant testified that Ms. W said that she did not want to hear it, that they were too short-staffed, and that the claimant could not be off. The claimant said that it was time for shifts to change, and that (Mr. S) and (Mr. W), nurses on the next shift, were present when she reported her injury to Ms. W. She said that the statements of Mr. S and Mr. W are correct. She testified that she fell on a Friday, went home, went to bed, and returned to work on Monday. She said that she did not work the following day because of back pain. She testified that between (date of injury), and May 12, 1994, she did not work four, five, or six days because of back pain, but there is no record of the days she had off. She explained that employees at the prison were not paid overtime but would take time off after they had worked overtime and that records of this time off were not kept. She said that she previously had surgery for a ruptured disc, knew what was wrong with her, but did not want to admit it. She said that she eventually called the office of (Dr. G), her family doctor, and got an appointment with him in July when he returned from vacation. She said that she also saw (Dr. D) at the (Clinic). She testified that both doctors recommended an MRI that revealed a bulging disc. She said that she is losing control of her bladder and has lost most of the reflexes in her legs; that Dr. D has recommended surgery because a disc is pressing against her spinal cord; and that the self-insured will not approve the surgery, physical therapy, or any other treatment. She said that her doctors told her that she could not work and that her doctors have not returned her to work.

On cross-examination the claimant testified that she told Ms. W that she was hurting. She also said that she called Ms. W several times when her back was hurting real bad. At the request of the attorney representing the self-insured, the claimant read a part of the statement signed by Ms. W in which Ms. W said that she asked the claimant if she was hurt

and that the claimant said that she was not. The claimant denied telling Ms. W that. The claimant also read part of the statement of Ms. W in which Ms. W said that the claimant called and told her that she had fallen out of the tub at home. The claimant said that that was not true. The claimant testified that she did call Ms. W from home, that it is noisy in the clinic, and that Ms. W may have thought that she heard something like that. She also said that contrary to what Ms. W wrote in her statement, she did have other conversations with Ms. W about the incident before August 1, 1994. She said that she does not know what reports Ms. W may have made. She testified that she stopped working at the prison on May 12, 1994, because she had been taking pain medication for her back and the employer would not let her take pain medication and work. She said that her attorney referred her to Dr. D, that she saw Dr. D for the first time about the first of August, that Dr. D requested that she see a urologist, that she had adhesions after her prior back surgery, and that she was advised that since she is prone to have adhesions she could be worse after having surgery. The claimant read parts of a medical report and volunteered her explanation of some entries. She said that a doctor did not take her off work after May 12, 1994, because the self-insured denied her medical benefits and she did not see a doctor.

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. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). The burden of proof 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, that the claimant timely reported the injury to the employer, Texas Workers' Compensation Commission Appeal No. 94114, decided march 3, 1994, and that the claimant has 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. Texas Workers' Compensation Commission Appeal No. 91013, decided September 13, 1991. However, the testimony of the claimant as an interested party only raises an issue of fact for the hearing officer to resolve. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ); Burelsmith v. Liberty Mutual Insurance Co.,568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). The hearing officer found that the employer forbade the claimant to work after May 12, 1994, because she was taking medication to alleviate her pain, but the hearing officer did not make a finding on termination of employment. Even if the hearing officer had found that the claimant was terminated for cause, that would have been but a factor along with the continuing effect of the injury on the ability of the claimant to obtain and retain employment in determining whether the claimant had disability. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer obviously believed the claimant's testimony that she was injured in the course and scope of her employment on (date of injury); that the claimant timely reported the injury to her employer; and that she was not able to work after May 12, 1994, because of the (date of injury), injury. An appeals 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. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619,620 (Tex. App.-El Paso 1991, writ denied.). When reviewing a hearing officer's decision for sufficiency of the evidence, we will reverse such decision only if it is 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); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). The evidence is sufficient to support the determinations of the hearing officer. Accordingly, we affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge