

APPEAL NO. 960023

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 November 21, 1995, with [hearing officer] presiding as hearing officer. He determined that the appellant (claimant) did not sustain a compensable injury on [date of injury], and that the claimant did not have disability. The claimant appealed urging that the determinations of the hearing officer are contrary to the overwhelming and great weight of the evidence and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision that she sustained a compensable injury on [date of injury], and that she had disability from May 30, 1995, through October 10, 1995, or in the alternative reverse the decision of the hearing officer and remand the case to the hearing officer. The respondent (carrier) replied urging that the determinations of the hearing officer are supported by sufficient evidence and requesting that the Appeals Panel affirm the decision of the hearing officer.

DECISION

We affirm.

The claimant contended that she injured her right arm removing screws that had been cross-threaded and that she had disability. The carrier contended that the claimant was not injured in the course and scope of her employment and did not have disability. The claimant testified on her own behalf and was extensively cross-examined by the attorney representing the carrier. The claimant's supervisor and a coworker, who both worked at work stations adjacent to the station the claimant worked at, testified and supported the carrier's position and were cross-examined by the attorney representing the claimant. Both parties introduced medical records. After considering the conflicting evidence and mentioning some inconsistencies in the claimant's testimony and her previous statements, the hearing officer wrote in his Statement of the Evidence that the evidence is insufficient to show that the claimant sustained an injury on [date of injury], or on any other day while working for the employer.

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 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 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. 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). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer

must look to 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 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 that the claimant did not sustain a compensable injury and did not have disability 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 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.

Accordingly, we affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge