

APPEAL NO. 980001

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 on December 5, 1997. She determined that the respondent (claimant) sustained an injury in the course and scope of his employment on _____, and that he did not have disability. The appellant (carrier) appealed the determination that the claimant was injured in the course and scope of his employment, urging that that determination is against the great weight and preponderance of the evidence and requesting that the Appeals Panel reverse that determination and render a decision that the claimant did not sustain a compensable injury on _____. The claimant responded, urging that the evidence is sufficient to support the appealed determination and requesting that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a summary of the evidence and only a brief summary concerning the appealed determination will be repeated in this decision. On _____, the claimant was driving a pickup truck owned by the employer, he was stopped at a signal light, the truck he was in was struck in the rear by another pickup truck, and only very minor damage was done to the rear bumper of the truck. The claimant returned to work; continued to work until he was terminated on June 2, 1997; said that he worked in pain, but thought he would get better; said that he told other workers he was in pain; but other workers do not remember him saying that. The claimant said that he saw a doctor on June 4, 1997, but the records of the doctor indicate that he first saw the claimant on June 9, 1997. X-rays showed a normal cervical spine. The doctor diagnosed a cervical strain, prescribed muscle relaxers, requested an MRI that was not approved, and placed the claimant on light duty.

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, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the 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. The hearing officer determined that the claimant sustained a cervical strain in the course and scope of his employment. That a different determination could have been made based on the same evidence is not a sufficient basis to overturn the determination of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. The determination of the hearing officer that the claimant sustained a compensable injury on _____, is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. 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 hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge