APPEAL NO. 980020

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 8, 1997. He (hearing officer) determined that the appellant (claimant) was not injured in the course and scope of his employment on _____, and that since he did not sustain a compensable injury, he did not have disability. The claimant appealed, urging that he was injured in the course and scope of his employment and that he had disability and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. A response from the respondent (self-insured) has not been received.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a summary of the evidence and only a brief summary will be repeated in this decision. It is undisputed that on _____, the claimant and (Mr. F), a coworker, were fighting at work and that the claimant's wrist was broken while they were fighting. The claimant testified that the fight started when Mr. F pushed him over a disagreement about the use of a mechanical sweeper; that they pushed each other; that (Mr. C), another coworker, told them to stop; that they stopped for a few seconds; that Mr. F stood up like he was going to come at him; that he hit Mr. F to keep him from hitting him; that Mr. F hit him a bunch of times; that he fell; that he put out his right hand to break the fall; and that he broke his wrist. Mr. F testified that the pushing and shoving started because the claimant tried to take his hand off the sweeper; that they pushed and shoved each other; that Mr. C broke that up; that he went to plug the sweeper in to be recharged; that the claimant hit him while he was bent over to plug in the sweeper; and that they hit each other. Mr. C testified that he was under a truck; heard the claimant and Mr. F fighting; got from under the truck; told them to stop; they did; he got back under the truck to finish his work; as soon as he got back under the truck, they started fighting again; he did not see the fight start; and he broke up the fight again.

Section 406.032(1)(B) provides in part that a carrier is not liable for compensation if the injury was caused by the employee's willful attempt to unlawfully injure another person.

The hearing officer stated that Mr. F's version of the events was more credible and was better corroborated than was the claimant's version. He determined that the claimant and Mr. F were involved in an altercation, that they abandoned that altercation, that the claimant renewed the altercation by punching Mr. F on the side of his head, that the claimant struck Mr. F with the intent to unlawfully injure him, and that the claimant was not injured in the course and scope of his employment. 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. The hearing officer judges the credibility of witnesses and resolves conflicts and inconsistencies in the evidence. Texas Workers' Compensation Commission Appeal No. 92657, decided January 15, 1993. 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). The hearing officer's determinations are 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 his. 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