

APPEAL NOS. 001347
AND 001729

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 7, 2000. The hearing officer to resolve disputed issues concerning two claims. The hearing officer determined that the appellant (claimant) was not injured in the course and scope of his employment on _____, or on _____; that the claimant notified the employer of the claimed _____, injury on September 29, 1999; that he notified the employer of the claimed _____, injury at the benefit review conference on March 9, 2000; that the claimant did not have good cause for not timely notifying the employer of the claimed injuries; that since the dates of the claimed injuries, the claimant has been able to obtain and retain employment at the wages he earned prior to the dates of the claimed injuries; and that the claimant did not have disability. The claimant filed a general appeal that will be considered to be an appeal of the sufficiency of the evidence to support the decisions of the hearing officer. The respondent (carrier) replied, urged that the evidence is sufficient to support the decisions of the hearing officer, and requested that they be affirmed.

DECISION

We affirm.

Both decisions of the hearing officer contain thorough statements of the evidence. The claimant worked as a hydraulic systems installer. He testified that most of the work did not involve heavy lifting. He said that on _____, he was required to disassemble a hydraulic lift and injured his back when he and his brother lifted a very heavy piece to load on a truck. He said that the severe pain did not last long, that he did not think that the injury was serious, and that he was able to continue working because he did not have to do heavy lifting. He said that at another job site he was required to do heavy lifting installing hydraulic lifts and injured his back on _____. He said that he was able to continue working until September 29, 1999, when his back pain became too severe for him to work; that he called the owner of the hydraulic company and told him that he had hurt his back lifting in _____; and that the owner told him he no longer needed him, that he had nothing to do with the injury, and that he should contact the staff leasing company. He said that he went to an attorney, that the attorney referred him to a chiropractor, and that he has not been able to work since September 29, 1999. The report of the chiropractor indicates that he first saw the claimant on October 29, 1999; that the claimant told him that he injured his back lifting; and that the claimant received therapy in October, November, and December 1999.

A transcript of an interview of the owner of the hydraulic service company indicates that the owner said that the claimant was late for work on September 29, 1999, and blamed the person he had been riding with for not picking him up; that the other worker told him that he went to the claimant's house twice, but the claimant was not there; that he had had some problems with the claimant; that he told the claimant that he had to let him go;

that about 30 or 45 minutes later, the claimant called him and told him that he had hurt his back on the job; and that he told the claimant to report it to the staff leasing company. The loss prevention manager for the staff leasing company testified that he first learned of the _____, claimed injury at the benefit review conference.

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 because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness' testimony, and resolves conflicts and inconsistencies in the evidence. 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 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 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). In the statements of the evidence in his decisions, the hearing officer stated why he did not find testimony of the claimant to be credible and commented on the lack of clinical or laboratory findings indicating what the injury was in the reports of the chiropractor. The determinations of the hearing officer in each Decision and Order are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 224 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 his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer for the claimed _____, injury and for the claimed _____, injury.

Tommy W. Lueders
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Robert W. Potts
Appeals Judge