APPEAL NO. 931068

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq.*). A contested case hearing (CCH) was held on October 5, 1993, in (city), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were injury, timely notice and disability. The hearing officer found that on (date of injury), the respondent (claimant herein) suffered a compensable injury in the course and scope of employment, that the employer had actual knowledge of the claimant's work related injury on (date of injury), and that as result of her job-related injury the claimant had disability from (date of injury), until June 12, 1992. The appellant (carrier herein) requests we reverse the decision of the hearing officer because there is not sufficient evidence to support the findings of the hearing officer as to injury or notice. The carrier also requests that we correct typographical errors in the decision of the hearing officer concerning the period of disability. The claimant responds asking that we affirm the decision of the hearing officer.

DECISION

We reform Findings of Fact Nos. 9 and 10 in the hearing officer's decision to reflect that where the date "1993" appears in these findings, the date "1992" should appear. Finding no reversible error in the record and sufficient evidence to support the decision of the hearing officer, we affirm his decision as reformed.

The claimant, who was a secretary for (employer), alleged that she was injured on (date of injury), when she felt back pain while opening a door. She testified that she notified her supervisor that she had injured her back. Her supervisor testified that he stated that an ambulance should be called. The claimant was taken by ambulance to the hospital from work. Medical records at the hospital emergency room as well as later medical records do not reflect the history of injury now alleged by the claimant. The claimant testified that some doctors did not ask and others may have misunderstood her description of her injury.

The supervisor testified that the claimant did not report the incident as a job-related injury until February 1993. The claimant testified that she described the injury to her employer on June 9, 1992, but he told her that this injury would not be covered by workers' compensation because she already had some pain when she came to work. The claimant testified that she accepted the supervisor's opinion because workers' compensation was his field (the supervisor was a risk control manager for the employer which is a company that adjusts insurance claims as well as provides risk management consultations on liability matters, including workers' compensation).

The claimant testified that due to her injuries she was unable to work from (date of injury), until June 15, 1992, except she was able to work with difficulty three hours on June

9, 1992, and two hours and 15 minutes on June 12, 1992.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). 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 factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and 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 carrier argues that to establish an injury the claimant must establish a causal connection between the alleged mechanism of injury and physical harm. The carrier cites Texas Workers' Compensation Commission Appeal No. 92617, decided January 14, 1993 (hereinafter Appeal No. 92617), for this proposition as well as the proposition that in certain back injury cases this evidence must establish such a link to a reasonable medical probability. Carrier misunderstands our decision in Appeal No. 92617. In that case the claimant had an undisputed back injury and later claimed that her neck had also been injured in the same accident. There was no mention of the neck injury until many months after her accident and the hearing officer ruled that her neck was not injured in the accident. In Texas Workers' Compensation Commission Appeal No. 93521, decided August 6, 1993, we described Appeal No. 92617 as a case in which we affirmed a hearing officer who found injuries were not compensable when not promptly recorded in medical records. We fail to see the applicability of that case to the carrier's argument concerning the mechanism of injury. In any case, we also stated in Texas Workers' Compensation Commission Appeal No. 93938, decided November 24, 1993, that Appeal No. 92617 stood for the proposition that the causality (connection between the condition and the incident) between an injury and

an accident is a fact question.

There is certainly evidence to support the finding of the hearing officer as to injury. The claimant testified that she was injured and related the mechanism of accident to her injury. Corroboration of an injury is not required and may be found based upon a claimant's testimony alone. Gee v. Liberty Mutual Insurance Co., 765 S.W.2d 394 (Tex. 1989); Texas Workers' Compensation Commission Appeal No. 93313, decided June 7, 1993.

The carrier argues that the mechanism of injury described by the claimant--opening a door--is a normal activity and not one that would result in back injury. Many mechanisms of work related injury--lifting, bending, and twisting--are normal activities and not hazards peculiar to the workplace. While the claimant's supervisor testified that as risk manager he was able to determine whether the door could not have caused the accident, the hearing officer as the finder of fact was free to reject his opinion or even disbelieve his testimony.

Resolving the inconsistencies between the medical histories and the testimony of the claimant concerning the mechanism of injury clearly is within the province of the hearing officer. Under the standard appellate review discussed above we will not substitute our judgment for his.

The hearing officer found that the claimant's supervisor was aware of the claimant's injury on (date of injury). There is evidence in the record to support this finding and we do not find that it is against the great weight and preponderance of the evidence.

The carrier's final point is well taken. All of the evidence and all of the hearing officer's findings except Findings of Fact Nos. 9 and 10 discuss injury, notice and disability in 1992. In Findings of Fact Nos. 9 and 10, the decision speaks of 1993. Clearly, this is a typographical error and we reform the decision to reflect that in Findings of Fact Nos. 9 and 10 whenever "1993" appears it is corrected to "1992."

As reformed the decision of the hearing officer is affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge