APPEAL NO. 93854

This appeal is brought 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 July 21, 1993, in (city), Texas, with (hearing officer) as hearing officer. Both the appellant's (claimant herein) alleged injuries of (date of injury), and of (date of injury), were considered at the CCH. The issues at the CCH were: 1. whether the claimant had disability as a result of the (date of injury), accident; 2. whether the claimant sustained an injury as a result of a (date of injury), accident; 3. whether the left inguinal hernia is the result of the (date of injury), injury; 4. whether the claimant timely reported an injury to the employer; and 5. whether the claimant had disability as a result of the (date of injury), accident. The hearing officer ruled that: the claimant had disability as a result of the (date of injury), injury from March 7, 1991, until June 17, 1991; on (date of injury), the claimant suffered a recurrent right inguinal hernia injury while working for his employer; the claimant did not sustain a left inguinal hernia on (date of injury), while working for his employer; the claimant timely reported his recurrent right inguinal hernia injury to the employer on (date of injury), but the claimant did not timely report a left inguinal hernia injury to his employer; and claimant had disability beginning on (date of injury), due to the recurrent right inguinal hernia he sustained on that date, continuing as of the date of the CCH. The hearing officer ordered the respondent/cross-appellant (carrier herein) to pay temporary income benefits (TIBS) until the claimant's disability ends or he reaches maximum medical improvement (MMI).

Both the claimant and the carrier appeal the decision of the hearing officer. The claimant attacks the findings of the hearing officer that his left hernia was not related to his employment and not timely reported to the hearing officer. The carrier argues that there was insufficient evidence to support the hearing officer's findings that the claimant sustained a right inguinal hernia on (date of injury), and that the claimant still suffers from disability as a result of the right inguinal hernia. Neither the claimant nor the carrier filed a response to the other's request for review.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm.

The hearing officer fully and fairly summarized the evidence in his decision and we adopt his statement of the evidence for purposes of our decision. Briefly, the claimant testified that he was employed by the employer on (date of injury), when, while lifting a coil, he suffered a right inguinal hernia. On March 7, 1991, this hernia was repaired surgically by (Dr. R), M.D. On June 17, 1991, a narrative medical report from Dr. R stated that the claimant had a normal post operative course and that there was no evidence of hernia. On June 17, 1991, the claimant returned to work and continued to work for the employer until he was laid off work in November 1991.

Claimant returned to work for the same employer on March 2, 1992, and continued

to work for the employer until (date of injury), when, according to the testimony of the claimant, while lifting laminated sheets, he experienced pain in his right groin area below the area on which he had earlier been operated for hernia. The claimant testified that on (date of injury), he reported this injury to his supervisor, (Mr. S), who sent him to a doctor. The claimant testified that he had been unable to return to work since (date of injury), due to this injury.

Dr. R originally diagnosed the claimant's injury as a recurrent right inguinal hernia and performed hernia surgery on the claimant on June 12, 1992. Dr. R's medical narratives originally indicated that the claimant's recurrent right inguinal hernia sustained on (date of injury), was a re-injury of the previous injury of (date of injury), and stated that the claimant could return to work by the end of August 1992. Dr. R examined the claimant on August 12, 1992, and determined that the claimant had a left inguinal hernia after continued complaints by the claimant of swelling and pain in the left groin area. On August 12, 1992, Dr. R recommended surgical repair of the claimant's left inguinal hernia and stated that the claimant could not return to work until this repair took place.

In response to a letter from the carrier, Dr. R stated in a letter dated March 23, 1993, to the carrier's claim adjuster:

> [The claimant] has been told by his employer and insurance company that it depends on my testimony regarding his left inguinal hernia whether it is to be treated as a job related injury or not. I have explained and advised him several times that he has a left inguinal hernia and needs surgical repair and the determination of whether it is a work related injury or not will be made by your company or his employer not by me.

In a letter dated June 18, 1993, to the Texas Workers' Compensation Commission (Commission) Dr. R further clarified his opinion, stating:

> This is in response to the letter dated June 15, 1993 and I will attempt to answer your questions to the best of my abilities.
>
> Q- In all medical probability, could the left inguinal hernia have been caused in May, 1992 when [the claimant] lifted something heavy at work?
>
> A-Yes, it is possible.
>
> Q-Why did the hernia go undetected until August, 1992?
>
> A-a)It is possible that the hernia was so small that it was difficult to detect.
>
> b)It is possible that no hernia was present.

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).

Applying the above standard of review, we are required to reject the argument of the carrier that the hearing officer's finding that the claimant did sustain a right inguinal hernia on (date of injury), is unsupported by the evidence. The carrier points to inconsistencies between the claimant's interrogatory testimony and his testimony at the hearing as well as in his hearing testimony. The carrier points to testimony of other witnesses refuting the claimant's testimony. These are exactly the type of inconsistencies it is the province of the hearing officer to resolve. Further, the question of injury in the course and scope of employment is a question of fact. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. It is well established that a finding of injury may be based upon a claimant's testimony alone. *See* Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). The hearing officer's decision on this issue is supported by sufficient evidence.

Nor are we persuaded by the carrier's contention that the finding of the hearing officer that the claimant had continuing disability was against the overwhelming weight of the evidence. The question of disability is one of fact. *See* Texas Workers' Compensation Commission Appeal No. 93452, decided June 21, 1993. Thus, as discussed *supra*, it is an issue for the hearing officer which will not be generally disturbed on appeal. Further, the carrier argues that Dr. R's narratives indicate that but for the claimant's left hernia, the claimant could return to work and, therefore, the claimant is not prevented from returning to work by his compensable right hernia injury. We note that Dr. R's opinion in this regard is ambiguous at best and that as stated earlier ambiguities in the medical evidence are for the hearing officer to resolve. More importantly, disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992; Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992.

The claimant challenges the hearing officer's finding that he did not sustain a left inguinal hernia in the course and scope of his employment. Again the question of injury is one of fact. Appeal No. 93449, *supra*. As an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Dr. R's narrative in regard to the relationship of the claimant's left inguinal hernia to his injury is ambiguous. We cannot say that the finding of the hearing officer is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See* Texas Workers' Compensation Commission Appeal No. 91068, decided December 20, 1991.

We are more troubled by the claimant's second point of error wherein he disputes the finding of the hearing officer concerning his timely reporting of his injury. The claimant's point seems to be that since his doctor did not diagnose the left hernia until August 1992, he could not have reported it earlier. This seems to be an argument that he had good cause for failure to report. The hearing officer makes no finding as to good cause, but finds that the claimant knew of his left groin pain on (date of injury). This finding seems to indicate that the injury to the left groin took place on that date which appears to contradict, as pointed out by the carrier's appeal, the hearing officer's finding that the claimant did not suffer a left inguinal hernia on (date of injury). We are further concerned how the hearing officer could find that the claimant reported his right hernia injury to his supervisor on (date of injury), but did not report his left hernia injury on that date. The claimant testified that he reported groin pain, albeit right groin pain. We do not believe that the claimant is required to diagnose the extent of his injury when giving notice. Citing Bocanegra v. Aetna Life Insurance Company, 605 S.W.2d 848 (Tex. 1980), we stated in Texas Workers' Compensation Commission Appeal No. 93694, decided September 23, 1993, "The appeals panel has not held that a claimant is obligated to tell his employer all the ramifications of an injury, possibly unknown to him at that time, when giving notice." As the Supreme Court of Texas said in Bocanegra, "[u]ncertainty in many complex areas of medicine and law is more the rule that the exception. It would be a harsh rule that charges a layman with knowledge of medical causes when, as in this case, physicians and lawyers do not know them."

What resolves our disquiet over the hearing officer's finding in regard to the claimant's failure to timely report the left inguinal hernia injury is that this case does not turn on this issue. Having affirmed the hearing officer's finding that the claimant did not sustain a left inguinal hernia injury in the course and scope of employment, for the reasons discussed *supra*, the question of whether or not the claimant timely reported the injury becomes surplusage. As such it is not necessary or applicable to our disposition of the case and may be disregarded. *See* Texas Indemnity Insurance Co. v. Staggs, 134 Tex. 318, 134 S.W.2d 1026 (Tex. 1940); Texas Workers' Compensation Commission Appeal No. 92075, decided April 7, 1992; Texas Workers' Compensation Commission Appeal No. 92135, decided May 18, 1992.

For the foregoing reasons, the decision of the hearing officer is affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

CONCUR IN THE RESULT:

Stark O. Sanders, Jr.
Chief Appeals Judge