APPEAL NO. 93916

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 in this case on September 2, 1993, in (city), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were: 1. did the appellant (claimant herein) suffer a compensable heart attack under the 1989 Act; 2. did the claimant injure his back, shoulder and head prior to or during the heart attack incident; 3. did the claimant give notice of his other injuries to respondent (carrier/employer), a statutorily self-insured political subdivision of the State of Texas, within 30 days or have good cause for failing to do so. The hearing officer ruled that the claimant did not suffer a compensable heart attack, that the claimant did not suffer a compensable injury to his neck, back, and/or shoulder prior to or during his heart attack on (date of injury), and the claimant did not time ly report any injury other than his heart attack to the employer nor did he have good cause for failing to do so. The claimant appeals arguing that the claimant did injure his back, neck and shoulder when he tripped over a irrigation pipe after he tried to disengage his foot from the cord of a malfunctioning weedeater which wrapped around his leg, but could not produce medical reports substantiating these injuries because the carrier has refused treatment of them, that the stress from the incident with the weedeater brought on the claimant's heart attack, and that claimant reported his back, neck and shoulder injuries to the carrier on November 3, 1992, after he underwent triple bypass surgery and was still recovering from this surgery, but did not realize until recently just how serious his neck, back and shoulder injuries were. The carrier files no response on appeal.

DECISION

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

The claimant testified that he was working in his regular employment as a school custodian for the carrier/employer on (date of injury), cutting weeds along a fence with a weedeater. The claimant testified that he had been cutting weeds for about 20 minutes when the machine line came out hitting him in the foot, causing him to fall and hit his head with the weedeater landing on top of him. The claimant further testified that he briefly lost consciousness, but then got up. The claimant stated that he wasn't feeling well, so he started to go to where his wife, who was a custodian at the same school, was working.

The claimant's wife testified that as her husband approached her he appeared ill and wanted her to take him to the hospital. She stated that she told him she would call 911 and did so. The claimant was taken by ambulance to the hospital where, after an angiogram showed a 99% arterial obstruction, he underwent triple bypass surgery the next day.

The claimant testified that prior to (date of injury), the last time he had seen a doctor had been six or seven months before, when he had seen his family doctor. The claimant stated that he had an ear infection and first went to an ear, nose and throat specialist who gave him a prescription for an antibiotic. After having an adverse reaction to the antibiotic,

which included heart palpitations, the claimant went to his family doctor who advised him to discontinue the antibiotic and tested his heart, including running an EKG and placing him on a heart monitor. The claimant stated that after running these tests his family doctor told him that he found no heart problem. The claimant, who was 64 at the time of the heart attack, testified that prior to (date of injury), he had no history of heart problems, chest pains or hypertension.

The claimant offered into evidence letters from (Dr. P), the claimant's treating cardiologist, who said that the claimant's heart attack was precipitated by his job. The carrier offered the written opinion of (Dr. M), also a cardiologist, stating that the claimant's heart attack was due to progressive atherosclerosis over a period of years, and not his work on (date of injury). The thrust of the claimant's case is that his accident at work on (date of injury), precipitated his heart attack.

The claimant also testified that he is having problems with his head, neck and shoulders resulting from his fall on (date of injury). He testified that these problems are being treated by a (Dr. W) with medication and therapy. The claimant and his wife testified that he told his wife about the fall at work from being hit by the weedeater line on September 11, 1992, after he was removed from the intensive care unit into a regular hospital room. The claimant testified that he spoke to his supervisors only once while in the hospital and that they only asked him when he intended to retire to which he replied he would go ahead and retire immediately. The claimant stated that he never told any of the supervisors about his fall at work because, once he retired, he assumed he was on his own and would have to pursue his workers' compensation himself. The claimant testified that he in fact did get the necessary information on how to file a claim from the Texas Workers' Compensation Commission (Commission) and filed a claim. The claimant also testified that he informed an adjuster for the carrier/employer, (PG), about his fall during a recorded interview which apparently took place on November 3, 1992.

One of the claimant's supervisors (Mr. R) testified that he saw the claimant at the hospital and asked him what happened. Mr. R testified that the claimant told him nothing about falling. Mr. R also stated that the claimant's wife, who continued to work under his supervision for some time after her husband's illness, never mentioned it either.

The claimant denied that Mr. R ever asked him what happened. The claimant stated that he was initially in intensive care for days after his heart attack, and even after his discharge from the hospital, remained weak and was in rehabilitation for three months.

The question of injury in the course and scope of employment is a question of fact. 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).

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). However, 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). In the present case, all the evidence that the fall took place came from the claimant. It was within the hearing officer's discretion to accept or reject that testimony. In this case, he chose to reject this testimony and since we do not believe that his doing so is against the overwhelming weight of the evidence, under the above standard of appellate review, we cannot set his finding aside.

The appropriate legal standard to apply in determining whether or not a claim for heart attack is compensable is found in Section 408.008. Section 408.008(2) provides as follows that a heart attack is a compensable injury only if:

> the preponderance of the medical evidence regrading the attack indicates that the employee's work rather that the natural progression of a pre-existing heart condition or disease was a substantial contributing factor of the attack;

Reviewing the conflicting medical evidence of Dr. P and Dr. M in the record, we must say that there is sufficient evidence in the record to support the finding of the hearing officer that the claimant's heart attack was not compensable under the above legal standard and the scope of appellate review discussed *supra*.

Finding the evidence sufficient to support the hearing officer's findings of no compensable injury, the questions timely reporting and good cause become moot.

The decision of the hearing officer is affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge