APPEAL NO. 93968

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: 1. whether the appellant (claimant herein) suffered psychiatric problems naturally resulting from her compensable injury of (date of injury); 2. whether the claimant reached maximum medical improvement (MMI), and if so when; and 3. what is the claimant's correct impairment rating. The hearing officer found that the claimant did not suffer any psychiatric problems resulting from her compensable injury of (date of injury). The hearing officer also found that the claimant reached MMI on September 2, 1992, with zero permanent impairment based on the report of a designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant appeals complaining of specific findings by the hearing officer and contending that the evidence established the relationship of psychiatric problems to her accident, that the designated doctor failed to give her a complete evaluation and that the great weight of the contrary medical evidence overcame the opinion of the designated doctor as to MMI and impairment. The respondent (carrier herein) replies that all the challenged findings are supported by the evidence and the decision should be affirmed.

DECISION

Finding no reversible error in the record and sufficient evidence to support the decision of the hearing officer, we affirm. To prevent misinterpretation, we do reform one of the hearing officer's findings of fact.

The claimant testified that she went to work for the employer, a delivery service, on December 17, 1991, and that on (date of injury), she was returning to (city) from a courier run to (city), Texas, when she encountered a rainstorm. The claimant stated that the vehicle she was driving went into a skid and left the road. The claimant alleged that this mishap resulted in an injury to her neck.

The claimant originally testified that she was seen about one week after the accident in an emergency room for her neck problems. After reference to medical reports, the claimant admitted that the first record of any visit to a doctor regarding her injury was on March 25, 1993, approximately six days after she had been terminated due to an argument with her supervisor. After her initial visit to the emergency room, the claimant saw (Dr. B), an orthopedic surgeon, who indicated that the claimant's CAT scan taken at the emergency room was negative, that many of the claimant's symptoms were inexplicable, and that his diagnosis was cervical strain. After she failed to respond to physical therapy, Dr. B referred the claimant to (Dr. Z), a neurosurgeon who in turn referred her to (Dr. G) for rehabilitation and to (Dr. Go) for a psychiatric workup.

Dr. Go diagnosed the claimant's mental condition as major depressive disorder secondary to post-traumatic stress disorder. Dr. Go related the claimant's post-traumatic stress disorder to her motor vehicle accident of (date of injury). The carrier disputed the relationship of the accident to the claimant's psychiatric problems. The Commission

ordered an examination by (Dr. C), an assistant professor of psychiatry at the (medical school), to determine the relationship between the accident and the claimant's psychiatric problems. Dr. C evaluated the claimant and rendered an opinion that the claimant's accident was insufficiently traumatic to support a diagnosis of post-traumatic stress disorder. Dr. C diagnosed the claimant as having major depression and major personality disorder. Dr. C expressed the opinion that these problems were not related to the accident of (date of injury), but to other stressors in the claimant's life.

(Dr. Q) certified on a Report of Medical Evaluation (TWCC-69) that the claimant reached MMI on July 14, 1992, with a zero percent impairment rating. The Commission appointed (Dr. A) as designated doctor to determine MMI and impairment. Dr. A certified on a TWCC-69 that the claimant had reached MMI on September 2, 1992, with a zero percent impairment rating.

In the present case there is contradictory medical evidence as to what the claimant's psychiatric problems are and whether or not they are related to her compensable injury. 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 this standard of review in the present case, we find that the decision of the hearing officer that the claimant did not suffer psychiatric problems resulting from her accident is supported by sufficient evidence.

Section 408.122(b) provides:

> If a dispute exists as to whether the employee has reached maximum medical improvement, the commission shall direct the employee to be examined by a designated doctor chosen by mutual agreement of the parties. If the parties are unable to agree on a designated doctor, the commission shall direct the employee to be examined by a designated doctor chosen by the commission. The report of the designated doctor has presumptive weight, and the

> commission shall base its determination of whether the employee has reached maximum medical improvement on the report unless the great weight of the other medical evidence is to the contrary.

Section 408.125(e) provides:

> If the designated doctor is chosen by the commission, the report of the designated doctor shall have presumptive weight, and the commission shall base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary. If the great weight of the medical evidence contradicts the impairment rating contained in the report of the designated doctor chosen by the commission, the commission shall adopt the impairment rating of one of the other doctors.

Under the facts of the present case, we find that the hearing officer correctly applied the above statutory provisions. The only opinion as to MMI and impairment in the record, other than that of the designated doctor, was Dr. Q's which provided an earlier MMI date and the same impairment rating. This obviously would not constitute the great weight of the contrary medical evidence. Nor do we find merit in the claimant's assertion, without any support in the record, that the designated doctor failed to give her a complete evaluation.

The claimant does challenge the hearing officer's Finding of Fact No. 5, which discussed the incident in which the claimant's vehicle skidded off the road on (date of injury), as follows: "Claimant did not suffer any injuries as a result of this incident." This finding is stated in overbroad terms. There was apparently no dispute concerning the claimant's neck injury, or at least no issue concerning it. Nor was there any indication that the carrier had ever contested the claimant's neck injury. The hearing officer obviously intended in Finding of Fact No. 5 to address an issue that was before him--whether the claimant's psychiatric problems related to her injury of (date of injury). To preclude any misunderstanding on this issue, which a reading of carrier's response to the claimant's request for review indicates may well in fact exist, we reform the hearing officer's Finding of Fact No. 5 to read as follows: "Claimant did not suffer any psychiatric injuries as a result of this incident."

As reformed, the decision of the hearing officer is affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge