APPEAL NO. 990010

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 9, 1998. The issues at the CCH were whether the respondent's (claimant herein) compensable injury extended to the claimant's cervical spine and shoulders and whether the appellant (self-insured herein) timely contested the compensability of the claimant's cervical spine and bilateral shoulder injury. The hearing officer determined that the self-insured timely contested the compensability of the cervical spine and shoulders. This determination has not been appealed by either party and has become final pursuant to Section 410.169. The hearing officer concluded that the claimant's injury did extend to her cervical spine and to her shoulders. The self-insured appeals, challenging this conclusion as well as some of the factual determinations by the hearing officer underlying it. There is no response from the claimant in the appeal file.

DECISION

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

The parties stipulated that while working for the self-insured, the claimant sustained a compensable bilateral carpal tunnel injury on _____. The claimant testified her injury included an injury to her cervical spine and to her shoulders. In an October 6, 1997, report Dr. D, one of the claimant's treating doctors, stated that the claimant had been referred to him for an evaluation of shoulder, neck, and bilateral arm and hand symptoms. Dr. D stated as follows in a letter dated September 24, 1998:

> The patient [claimant] has been seen by myself on October of 1997 for an initial evaluation, at which point, she was suffering from a combination of neck, shoulder, arm, and hand pain. It was work-related with documentation of the complaints with her residual and ongoing complaints that I have seen her for today and over the last several months.

The self-insured argued that the claimant had cervical and shoulder problems prior to her compensable injury. The self-insured further argues that the claimant's cervical and shoulder problems had resolved prior to an automobile accident the claimant had in November 1997, to which the self-insured attributes the claimant's current cervical and shoulder problems. The claimant testified that she did not suffer any additional cervical and shoulder injuries in the November 1997 automobile accident.

The self-insured challenges the following findings of fact:

FINDINGS OF FACT

2. The Claimant's work-related activities on and immediately prior to _____, caused or aggravated, in part, the Claimant's neck and bilateral shoulder injuries.

3. The evidence is insufficient to establish that a subsequent nonwork-related motor vehicle accident is the "sole cause" of the Claimant's disability and/or need for additional medical treatment.

First, we note that the question of the extent of injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 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).

Generally, corroboration of an injury is not required and may be found based upon a claimant's testimony alone. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). An injury includes an incitement, precipitation, acceleration, or aggravation of any disease, infirmity, or condition, previously or subsequently existing, by reason of such damage or harm. *See* Gill v. Transamerica Insurance Co., 417 S.W.2d 720, 723 (Tex. Civ. App.-Dallas 1967, no writ). We find that applying the standard of appellate review discussed above the testimony of the claimant and the reports and letters of Dr. D are sufficient to support the hearing officer's finding concerning the extent of injury.

The self-insured argues that on appeal it has no burden. This is not true when it seeks to interpose a defense based upon a subsequent injury. To prove that a subsequent injury is the sole cause of a claimant's current condition, the burden is on the carrier to prove that the claimant's subsequent injury is the sole contributing factor to the claimant's

current condition.[1] Texas Workers' Compensation Commission Appeal No. 94844, decided August 15, 1994; Texas Workers' Compensation Commission Appeal No. 94280, decided April 22, 1994; *see also* Texas Workers' Compensation Commission Appeal No. 93864, decided November 10, 1993, and decisions and cases cited therein. This is so because an injury is compensable even though aggravated by a subsequently occurring injury or condition. Appeal No. 94844, *supra*, and cases cited therein. The mere existence of an intervening injury does not establish that the intervening injury is the sole cause of the claimant's condition. There may be more than one producing cause of claimant's current condition, namely the original compensable injury and the subsequent noncompensable accident. Generally, whether a later injury is the sole cause of the current condition is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94212, decided April 4, 1994. We find no error in the hearing officer's finding in the present case that the evidence was insufficient to establish that claimant's automobile accident was the sole cause of the claimant's disability and/or need for additional medical treatment.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge

[1]Obviously, carriers in this context encompasses self-insureds.