APPEAL NO. 990060

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 16, 1998. The issues at the CCH were injury and disability. The hearing officer found that the respondent (claimant) sustained a back injury on _____, while in the course and scope of his employment. The hearing officer also concluded that the claimant had disability from August 19, 1998, continuing through the date of the CCH. The appellant (carrier) argues that the hearing officer's finding that the claimant sustained an injury was contrary to the evidence and that absent a compensable injury, the claimant did not have disability. The claimant responds that the hearing officer's findings were sufficiently supported by the evidence.

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 hearing officer summarized the evidence in her decision and we adopt her rendition of the evidence. The claimant testified that he was injured on Compensable injury, when he was sent by the employer, a temporary employment agency, to work for a bread company. The claimant testified that he injured his back while pushing a rack full of tortillas. The claimant testified that he reported his injury the following day to Mr. C, his supervisor. The claimant testified that he was unable to work as result of his injury but was unable to see a physician due to an inability to afford to see a doctor until November 1998, when he saw Dr. V. Dr. V put the claimant off work and ordered an MRI, but the claimant testified that this testing had not been accomplished because of his inability to pay for it.

Mr. C testified that the claimant did not tell him about his injury until August 23, 1998. Mr. C stated that he offered to send the claimant to a medical clinic but the claimant declined, saying he did not need medical treatment. Mr. C said that the claimant later came by his office and told him that he was employed elsewhere.

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 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).

A finding of injury may be based upon the testimony of the claimant alone. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). 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, the hearing officer found an injury and this finding was supported by the testimony of the claimant as well as the medical reports of Dr. V. The carrier contends that the claimant's

testimony was contradictory and that the hearing officer should have given more weight to the testimony of Mr. C. The hearing officer pointed to contradictions between Mr. C's testimony and his prior recorded statement as her reason for discounting his testimony. Judging the credibility of the witnesses was clearly a matter for the hearing officer. We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant sustained a compensable injury.

Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. The hearing officer's finding of disability was supported by both the claimant's testimony and medical evidence from Dr. V. Also, we note that the carrier's sole ground of attacking the hearing officer's disability finding on appeal was its contention that the claimant did not have a compensable injury. Having found sufficient grounds to affirm her finding of injury, we affirm her finding of disability.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Judy L. Stephens
Appeals Judge