APPEAL NO. 990111

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 14, 1998. The issue at the CCH was whether the respondent's (claimant) compensable injury was a producing cause of the claimant's neck problems. The hearing officer concluded that the claimant's injury of _____, is a producing cause of her cervical herniation. The appellant (self-insured) files a request for review, arguing that the evidence is contrary to this determination and challenging certain findings of the hearing officer. The claimant responds, pointing to medical evidence that supports the hearing officer's decision.

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 the claimant suffered an injury in the course and scope of her employment on _____. The claimant described this injury as taking place when she was working as a licensed vocational nurse for the self-insured; while lifting a patient onto a bedside commode, she had to catch him. The claimant testified that she bore the full weight of the patient, who weighed over 200 pounds, when he fell on her. The self-insured does not dispute that as a result of this injury the claimant suffered low and thoracic spine problems as well as neck pain, but disputes that the herniated cervical disc found in an MRI in May 1998 was related to the compensable injury. The self-insured argues that this herniated disc resulted from an incident earlier in 1998 when the claimant bent over to flush a toilet.

The hearing officer describes the evidence as follows:

> Claimant testified she has had continuing neck pain since the injury. She has seen the doctor off and on for it and has mentioned it to her treating doctors. She has gone to the emergency room on several occasions due to neck pain over the years since the injury. It was not until recently that a doctor recommended an MRI of her neck. The MRI revealed the herniated disc which [self-insured] is disputing as related to the compensable injury.
>
> Claimant admitted she told her doctor she was flushing the toilet at the time the pain increased. She stated this was because he asked her what she was doing.

Dr. G, the claimant's treating doctor, relates the claimant's cervical disc herniation to the compensable injury and states that the toilet flushing incident did not create the herniation, but exacerbated her symptoms. Dr. R, who reviewed the claimant's medical

records at the self-insured's request, expresses the opinion that the claimant's cervical disc herniation did not result from her compensable injury.

The hearing officer's decision includes the following findings of fact and conclusion of law:

FINDINGS OF FACT

2. Claimant reported pain in her upper back and shoulder over the years along with pain in the sternum after the original injury.

3. Claimant has been treated for neck pain over the years as a referred condition.

4. Claimant did not have a cervical MRI until 1998.

5. Claimant's cervical MRI was positive for a herniated disc.

6. [Self-insured] did not prove by a preponderance of the evidence that the sole cause of Claimant's current disc herniation was an incident at home when Claimant flushed a toilet.

CONCLUSION OF LAW

3. Claimant's injury of _____ is a producing cause of her current cervical herniation.

We have held that the question of the extent of an 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 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).

There was conflicting evidence, including conflicting medical evidence, concerning the relationship of the claimant's herniated disc to her compensable injury. Applying the legal test described above, we find that there was sufficient evidence to support the findings and the decision of the hearing officer.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Tommy W. Lueders
Appeals Judge