APPEAL NO. 990371

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 January 25, 1999. The issues at the CCH were whether the respondent (carrier) waived the right to contest compensability of the claimed injuries to the appellant's (claimant) low back, left hip, and left knee and whether the claimant sustained a compensable injury to her low back, left hip and left knee in addition to the injury to her left foot on _____. The hearing officer concluded that the carrier did not waive its right to contest the compensability of the claimed injuries to the low back, left hip, and left knee. The hearing officer also concluded that while the claimant did sustain an injury to her left hip, she did not sustain a compensable injury to her low back or left knee. The claimant appeals these conclusions, pointing to evidence in the record she argues is contrary to them. The carrier responds that there is sufficient evidence to support the decision of the hearing officer.

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 summarizes the evidence and we adopt his rendition of the evidence. We will only discuss the evidence directly germane to the appeal. It was undisputed that the claimant suffered a compensable injury on _____, when she fell from a ladder at work. It was also undisputed that this injury was to her left foot. There was evidence that after the injury the claimant had a contusion to her left hip. On February 4, 1998, the carrier wrote Dr. M, who was then treating the claimant, to ask him about the relationship between the claimant's injury and low back complaints. There is evidence that the carrier disputed the compensability of an injury to her low back on March 19, 1998, and to her left knee and left hip on April 14, 1998.

The hearing officer in his decision quotes the following language from a medical report of Dr. M dated March 30, 1998:

> As I've explained to the patient and her sister, I am handicapped, as everyone else is, in this case because problems with the knee and back were not documented at the time of the original injury. I've explained to them that I can only go on the history which is available to me, both from the old record, and from the patient herself. I've explained to them that I have no way of verifying with certainty that present problems with the knee or back were definately [sic] caused by the work related injury. There is nothing associated with these particular problems which would definately [sic] prove the cause of relationship to that work related injury. On the other hand, the work related injury certainly was severe enough to produce these types of injuries and it would be very common in the case of a person with a significant injury that everyone's focus, including the patient, emergency

room physician, and orthopedic surgeon, would be on the most severe injury. Furthermore, it would not be uncommon that, in the excitement and urgency of such a situation that other injuries would not be identified. Rather, it is in fact, quite common that patients later identify and indicate other injuries once the primary (most painful) injury is treated.

Section 409.021 provides that a carrier waives its right to contest the compensability of an injury if it fails to dispute the injury within 60 days after having received written notice of the injury. On appeal the claimant contends that a letter written by the carrier to Dr. M on February 4, 1998, shows that the carrier had received written notice of an injury to her low back, left knee and hip on December 23, 1997, and on January 14, 1998. The letter in question states that Dr. M treated the claimant on December 23, 1996, and that the carrier is in receipt of a medical report dated January 14, 1998, from Dr. M where he stated the claimant is having some low back problems. The letter goes on to ask Dr. M if he thinks the low back problems are related to the claimant's injury.

The hearing officer found that this letter established that on February 4, 1998, the carrier had notice that the claimant's low back injury was alleged to be related to her compensable injury of _____. Without any evidence as to when the carrier received Dr. M's letter of January 14, 1998, we cannot as a matter of law extrapolate an earlier date of written notice. We thus find no error in the hearing officer's determination that the carrier timely disputed the compensability of an injury to the low back. Further, the February 4, 1998, letter in no way shows error in the finding of the hearing officer that the claimant failed to establish on what date, if any, the carrier received written notice that the claimant was alleging an injury to her left knee and left hip. Under these circumstances we find no error in the hearing officer concluding that the carrier timely disputed the compensability of these injuries as well.

The claimant challenges the hearing officer's determinations that her compensable injury did not include an injury to her left knee or low back. We have held that this question–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 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).

As the claimant points out in her appeal, there is evidence that her injury included an injury to her low back and left knee. However, as was pointed out in the language quoted above from Dr. M, there is uncertainty in regard to the extent of the claimant's injury. Given the fact that the claimant has the burden of proof in regard to injury, we cannot say that as a matter of law the hearing officer erred in finding that the claimant's injury did not include an injury to her low back or left knee.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Joe Sebesta
Appeals Judge