APPEAL NO. 990616

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 March 3, 1999. The issues at the CCH were injury and disability. The hearing officer found that the appellant (claimant herein) failed to establish an injury and did not have disability. The claimant appeals, challenging specific findings of the hearing officer and arguing that the fact that she immediately reported an injury and sought medical treatment showed that she had an injury. The claimant also contends that her prior injury had no bearing on this case. The respondent (self-insured herein) replies that the findings and the decision of the hearing officer 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 summarizes the evidence in her decision and we adopt her rendition of the evidence. We will briefly touch on the evidence most germane to the appeal. The claimant testified that she worked as a bus driver for the self-insured. She testified that between February 1998 and May 4, 1998, she was assigned a new route and an older model bus. She testified that both the seat and the handle that operated the bus door were loose. The claimant asserted that, due to the loose seat, she was bounced around, leading to an injury to her back, and that constant use of the loose door handle resulted in injury to her right shoulder and to her neck. Dr. L, the claimant's initial treating doctor, related the claimant's physical problems to an earlier motor vehicle accident she had in _____.

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 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).

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 no injury contrary to the testimony of the claimant. The claimant had the burden to prove she was injured in the course and scope of her employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). While the immediate reporting of an injury and the seeking of medical treatment is evidence in favor of an injury taking place, they do not compel the hearing officer to find injury. The hearing officer must decide what weight to give this evidence. We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden.

The claimant complains that her _____ injury was not relevant to whether she suffered the alleged injury. It is certainly true that whether or not one has been previously injured does not mean that one can or cannot suffer a subsequent injury. In fact, unless the issue is one of sole cause, the existence of a prior injury generally is not very relevant to the issue of subsequent injury. *See* Texas Workers' Compensation Commission Appeal No. 94217, decided March 31, 1994. In the present case, the hearing officer does not say that the prior injury precluded the present injury, but considers the fact that Dr. L appears to link the claimant's problems after the alleged injury to her prior injury rather than to a new injury. We find no error in this.

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition, disability depends upon a compensable injury. *See* Section 401.011(16).

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge