

## APPEAL NO. 990682

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 1, 1999. The issues at the CCH were injury and disability. The hearing officer determined that the appellant/cross-respondent (claimant) suffered a compensable injury with date of injury of \_\_\_\_\_, to his hands, arms and left shoulder. The hearing officer found that the arm included the wrist and elbow. The hearing officer found that the claimant's job duties did not cause him to develop medical problems in his neck or thoracic area. Finally, the hearing officer determined that the claimant had disability from October 24, 1998, continuing through the date of the CCH. The claimant appeals the finding of the hearing officer that his job duties did not cause him to develop medical problems in his neck or thoracic area. The claimant argues that this finding was supported by no evidence or by insufficient evidence. The respondent/cross-appellant (carrier) appeals the hearing officer's determinations that the claimant suffered a compensable injury and had disability. The carrier argues that the claimant failed to meet his burden to prove injury and disability and that the hearing officer's determinations that he did were contrary to 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 only briefly touch on the evidence germane to the appeal. The claimant testified that on October 20, 1998, while employed as welder, he was instructed to remove plywood from the inside of a railroad boxcar. The claimant stated that he noticed his hands began hurting. The claimant continued with the assigned task, but stated his pain increased. The claimant testified that he reported these problems to his supervisor and another employee on \_\_\_\_\_. The claimant said that the coworker suggested that the claimant might be having a stroke. The claimant sought medical treatment and was told that his problem was most likely work related. The claimant then reported a work-related injury. On October 26, 1998, the claimant went to Dr. D, the company doctor, who placed him under work restrictions. The claimant testified that the employer was unable to satisfy these restrictions and that he has not worked since October 24, 1998. The claimant continued treatment with Dr. C, who indicated that claimant's problems included his hands, arms, left shoulder, neck and thoracic area.

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 to the claimant's hands, arms and left shoulder, but not to his neck and thoracic area. The finding of an injury to the claimant's hands, arms, and left shoulder was supported by the testimony of the claimant and the medical evidence. We find that this determination was sufficiently supported by the evidence. We do not find sound basis to overturn the hearing officer's determination that the claimant did not suffer an injury to his neck and thoracic area. Claimant had the burden to prove he was injured in the course and scope of his employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden regarding a neck or thoracic injury.

Disability is a question of fact to be determined by the hearing officer and may be based on the testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Applying the standard of review discussed above, we find sufficient evidence to support the hearing officer's finding as to disability.

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge