APPEAL NO. 990741

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 22, 1999. The issues at the CCH were disability and extent of the injury. The hearing officer found that the medical evidence was insufficient to causally link the respondent's (claimant herein) diagnosed chronic pain syndrome with her compensable injury. The hearing officer determined that the claimant did have disability from the injury beginning on September 28, 1998, and continuing through February 9, 1999. This was the only period of disability that was in dispute at the CCH. The appellant (self-insured herein) files a request for review, arguing that the hearing officer's resolution of the disability issue was contrary to the evidence. There is no response from the claimant to the self-insured's request for review in the appeal file. Since no party has appealed the hearing officer's finding regarding extent of injury, this finding has become final pursuant to Section 410.169.

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. This includes a stipulation by the parties that the claimant sustained a compensable injury to her right forearm on _____. The claimant described this injury as taking place when an elevator door closed on her right wrist causing the trash can she was transporting to "bounce back" striking the other side of her right arm. The claimant has seen several doctors. She was initially placed off work and later returned to work with restrictions. In January 1998 the claimant began treating with Dr. H, who diagnosed the claimant with right forearm and wrist strain and carpal tunnel syndrome (CTS). Dr. H put the claimant off work from September 28, 1998, until February 9, 1999, at which time the claimant returned to work. Dr. M, the claimant's current treating doctor, stated in medical reports that he agreed that the claimant was unable to work between September 28, 1998, and February 9, 1999. Dr. P testified telephonically at the hearing that he believed the claimant could have worked without restriction during this period. The self-insured also introduced a surveillance film into evidence.

Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 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).

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. Here, the period of disability found by the hearing officer was supported by the testimony of the claimant and by medical evidence. The fact that there was contrary evidence only created a conflict in the evidence for the hearing officer to resolve. The self-insured's argument that the claimant could not have disability because she did not suffer from CTS is particularly unfounded in light of our decision in Texas Workers' Compensation Commission Appeal No. 982192, decided October 28, 1998, cited by the hearing officer in her decision in the present case[1], affirming a hearing officer who found that the claimant did have CTS as result of this compensable injury.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge

[1]Albeit Appeals Panel Decision 982192. This is obviously a typographical error.