APPEAL NO. 990839

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 24, 1999. The issue at the CCH was whether the appellant (claimant herein) sustained a compensable injury in the form of an occupational disease on _____. The hearing officer found that the claimant did not injure her cervical area as a result of repetitive work for the employer and that her cervical problems, if any, are the result of an ordinary disease of life. He concluded that she did not sustain a compensable injury in the form of an occupational disease on _____. The claimant appeals the hearing officer's decision contending that it is contrary to the great weight and preponderance of the evidence. The claimant points to the evidence, the medical evidence in particular, in support of her position. The respondent (carrier herein) argues 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 claimant testified that she worked for the employer for 32 years, the last 10 or 12 years as an inspector. The claimant testified that as a result of repetitive lifting and looking down at modules she inspected for the employer she suffered a cervical strain. The claimant reported her neck problems to the company nurse on _____. The nurse reported she found a walnut-sized cyst on the claimant's neck. The claimant was treated by Dr. G, D.C., who relates her neck pain to her work. In August the claimant had the cyst on her neck excised by another doctor. The claimant testified that after the excision her neck pain persisted and she continued treatment with Dr. G. The claimant underwent a cervical MRI that showed bulging cervical discs. The claimant was examined by Dr. M, M.D., at the carrier's request. Dr. M certified on a Report of Medical Evaluation (TWCC-69) dated January 12, 1999, that the claimant attained maximum medical improvement (MMI) on January 12, 1999, with a four percent impairment rating (IR). In a letter to carrier dated January 21, 1999, Dr. M stated as follows:

> When seen by me there was no objective evidence of a significant musculoskeletal or neurological injury of any type.

The claimant was also examined by Dr. B, D.C., a designated doctor selected by the Texas Workers' Compensation Commission, who certified on a TWCC-69 dated March 16, 1999, that the claimant attained MMI on March 11, 1999, with a 12% IR.

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 as well as to the medical evidence. 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.). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Joe Sebesta
Appeals Judge