APPEAL NO. 990854

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 April 2, 1999. The issues at the CCH were injury and disability. The hearing officer concluded that the respondent (claimant herein) sustained an injury to his thoracic spine in the course and scope of his employment on _____, and, as a result, had disability beginning on October 2, 1998, and continuing through November 3, 1998. The appellant (carrier herein) files a request for review arguing that the evidence as a whole showed that the claimant was suffering from a continuation of his 1993 compensable injury rather than a new injury and that the claimant failed to establish that his disability was a "but for" cause of a _____, injury. The claimant responds, arguing essentially that the decision of the hearing officer should be affirmed.

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 accurately summarized the evidence in his decision and we adopt his rendition of the evidence. It was undisputed that the claimant suffered a compensable injury in 1993 and remained under treatment for this injury in September 1998. It was also undisputed that, as a result of the 1993 injury, the claimant suffered some mid-back pain; the 1993 injury was primarily an injury to the claimant's low back. The claimant was diagnosed with a thoracic spine injury as result of a _____, incident at work. There was evidence that the claimant was unable to work from October 2, 1998, through November 3, 1998, as a result of this injury. There was also evidence that during this period the claimant was treated for this injury as well as his 1993 injury.

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).

Generally, corroboration of an injury is not required and may be found based upon a claimant's testimony alone. Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). Here, the fact the claimant suffered an injury on _____, was supported by both the claimant's testimony and medical evidence. Applying the standard of review discussed above, we find sufficient evidence in the record to support the hearing officer's determination that the claimant suffered a compensable injury on _____.

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. Here, there was sufficient evidence in the testimony of the claimant and medical records to establish the period of disability found by the hearing officer. While the carrier argues that the claimant had disability from his 1993 injury concurrent with the disability from his 1998 injury and the hearing officer, also, in his discussion, indicates that this is true for part of the period of disability, it does not preclude the claimant from having disability for the 1998 injury. The carrier's argument that the claimant must prove that his disability is a "but for" cause of his compensable injury seems to presuppose that the claimant must prove that the compensable injury is the only cause. This is simply not the law. The claimant must only prove that his injury is a producing cause of his disability. *See* Texas Workers' Compensation Commission Appeal No. 981382, decided August 10, 1998. There may be more than one producing cause. Texas Workers' Compensation Commission Appeal No. 951608, decided November 10, 1995. The burden is on the carrier to prove sole cause when that is the basis of its defense. Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994; *see also* Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). There was no sole cause issue before the hearing officer and no evidence in the record that the claimant's 1993 injury was the sole cause of his disability. We, therefore, reject the carrier's causality argument in regard to disability.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Judy L. Stephens
Appeals Judge