APPEAL NO. 990894

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 29, 1999. The issues at the CCH were injury and disability. The hearing officer found that the respondent (claimant herein) sustained a compensable injury on _____, and had disability beginning September 13, 1998, through the date of the CCH. The appellant (carrier herein) files a request for review, arguing that the evidence clearly established that the claimant's current condition resulted from a prior injury and surgery and not from the alleged injury of _____. The carrier also asserts that, absent a compensable injury, the claimant could not have sustained disability and that, in the alternative, if the claimant is found to have an injury and disability, that he could not have had disability from September 13, 1998, through September 20, 1998, because he was on vacation during this period. The claimant responds that the hearing officer's findings and decision were sufficiently supported by the record.

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 discusses the evidence and we adopt her rendition of the evidence. We, therefore, will only briefly summarize the evidence germane to the appeal. The claimant testified that on _____, he sustained a new back injury while working as a mechanic when he jumped and twisted when he was startled by a sudden noise. This incident was corroborated by the claimant's supervisor. It was undisputed that the claimant had a prior back injury and surgery some 10 years before the incident. The claimant testified he worked as a mechanic for the employer for approximately nine years before the _____, incident. There was medical evidence that the _____, incident aggravated the claimant's preexisting back condition and resulted in a new injury. There was also medical testimony that the claimant had been unable to work since the incident.

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). In this case, the hearing officer's finding of injury was supported by both the claimant's testimony and medical evidence. The carrier argues that the claimant's prior injury is the sole cause of the claimant's condition. A carrier who seeks to defeat a claim because of a prior injury has the burden of proving that the prior injury is the sole cause of the claimant's condition. Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994; Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). Here, the hearing officer specifically found that the claimant's prior injury was not the sole cause of his condition. We also note that the hearing officer found that the claimant's injury on _____, aggravated his preexisting condition. Aggravation is also a factual determination. Appeal No. 94428, *supra*.

Disability is a question of fact to be determined by the hearing officer and may be based on the testimony of the claimant alone. Here, the fact that the claimant had disability during the period the hearing officer found was supported by the testimony of the claimant and medical evidence. The carrier cites no case and we are aware of none that precludes the claimant as a matter of law from having disability during a period during which he was unable to work, even if he was on vacation during that period.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Robert W. Potts
Appeals Judge