APPEAL NO. 990936

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 15, 1999. The issues concerned whether the appellant, who is the claimant, sustained a compensable injury on _____, the extent of this injury, and whether he had disability as a result of the injury.

The hearing officer held that claimant sustained an electric shock but this resulted in no damage or harm to the physical structure of the body and that any inability to work since _____, was due to something other than a compensable injury. The contention that the effects of the shock extended to various other regions of the body was rejected.

The claimant appeals, arguing that since the hearing officer found he had a shock, she should have found damage therefrom. The claimant argues that evaluation of his claim requires justice which compels reversal of the decision in this case. The respondent (carrier) responds that the decision should be affirmed.

DECISION

Affirmed.

The hearing officer has done a good job at summarizing pertinent facts. Claimant was employed by (employer), and assigned to work at another company. The date he said the injury occurred was _____. A statement from the claimant, given to the adjuster on April 7, 1998, stated that as he pushed a stop/start button on a conveyor belt that was carrying material, with his middle finger, his hand was thrown up and he felt a burning sensation going down his hand all the way to his leg. He said he couldn't move. The statement does not mention that claimant was bent over or that his body, aside from his hand, was thrown back.

In his testimony at the CCH, claimant said that he pushed the stop button, was reaching over to pull a piece of material from the conveyor belt, and was thrown straight up, with his left hand thrown over his shoulder and his head thrown back to the ceiling. He said he was bent all the way over at his waist, until the shock. This happened around 7:00 p.m., which was the lunch break. Claimant said he worked the rest of his shift, another five or so hours. The injury occurred on a Friday evening. He reported the injury to his employer on Monday. He agreed that he worked that Saturday as well. Claimant said that he was treated by the emergency room on Monday morning, where he had blood tests taken and was put off work for two days. Claimant maintains his body felt numb and also that he had systemic pain. His follow-up treatment was by (clinic). The clinic record listed a history of the accident as the claimant having felt a shock when he pushed the button, and he pulled his arm back. The record is hard to read but indicates that claimant received some medication. Claimant sought chiropractic care on March 27, 1998; his treating doctor was Dr. E. These early records do not note an exit burn.

Dr. E testified by telephone at the CCH. He diagnosed a full range of injuries throughout the claimant's body, which are set forth in the hearing officer's decision. He stated that his understanding of how these injuries occurred was that when the claimant received an electric shock at work, in the intensity of 220 volts, he was in a bending position and straightened up very suddenly. Dr. E based many of his conclusions about back injuries and other regions of the body to this sudden straightening up as relayed by the claimant. Dr. E also testified to his understanding that the primary means of damage from an electrical shock itself was to the nervous system. He said that when claimant was examined initially by a colleague in his office, on March 27, 1998, an exit burn was noted on claimant's foot, as indicated by a lighter area of skin. Dr. E referred the claimant to Dr. N for an EMG. Dr. E took claimant off work and he had not worked since March 21, 1998. Dr. E said that the reason he could not work was not due to the electrical shock effects but to the conditions resulting from the reaction to the electrical shock (*i.e.*, sudden straightening up). Dr. E agreed that claimant's objective tests showed congenital narrowing in the cervical area, although he doubted that this would cause bilateral radiculopathy. Dr. E said that he was not inclined to release claimant back to work where he would risk reinjury pending further tests to put together all pieces of the puzzle. It was his opinion that while he could consider a light-duty release, employers did not usually "abide by those rules anyway." Dr. E said he had no knowledge of any prior injuries to the claimant before his electrical shock, or, at least, they were not factored into his opinion.

Dr. N noted a history of claimant having received a 220-volt shock, entering at his left hand, third finger, and exiting in the right leg. He noted that claimant had a two-level lumbar fusion in 1990. Dr. N diagnosed a "post electrical shock syndrome" which he compared to a post-concussion syndrome, and left and right cervical and lumbar radiculopathy, on April 22, 1998. On May 4, 1998, Dr. N wrote that he was treating the claimant for "post concussion syndrome" along with the radiculopathy.

Dr. T, who reviewed claimant's medical records on April 28, 1998, at the request of the carrier, said that an electrical shock would not normally fling the affected extremity upward, but would rather cause contraction of the muscles. He pointed out that several of the terms used by Dr. E were not diagnoses of injuries versus anatomical facts (for example, "disc syndrome" without any statement of pathology).

Claimant was evaluated by a doctor for the carrier, Dr. S, on July 20, 1998. Dr. S opined that claimant had a zero percent impairment rating and had reached maximum medical improvement (MMI) on July 8, 1998. He found normal range of motion of the neck and back. Dr. S found no clear evidence of neurological injury and opined that claimant had a probable minor electric shock and possible generalized traumatic myalgia. He found claimant's examination objectively normal and found no problem he could link objectively to the _____, incident. Dr. S said that he found the treatment of the injury by a chiropractor somewhat unusual and that electrical shocks should best be treated by a neurologist.

A record from Dr. P, D.C., dated September 15, 1998, recorded a history of the shock as knocking the claimant's arm back when he pushed the conveyor belt button and jolting his entire body. Dr. P stated that claimant had not reached MMI as of that date. His diagnoses were cervical and lumbar neuralgia, myofascial pain syndrome, and general deconditioning.

Finally, a brief functional capacity evaluation (FCE) performed on July 8, 1998, found that claimant could perform at the sedentary to light level. The context of this FCE appears to have been in the course of physical therapy rather than directed at a return to work.

Evidence was developed of prior injuries. Claimant had a right shoulder injury on the job in 1985. Claimant had a compensable fall injury in 1988 which did not result in lost time. Claimant had a prior 1990 compensable back injury resulting in surgery. Claimant had also been in an automobile accident "about five years ago" in which he injured his head and back, and his right leg. The claimant said he was rear-ended as his car was stopped. He had traction to his head. Claimant agreed that while he had had back problems and pains for a period of time prior to his electrical shock, they were not to the extent he presently had. Claimant was asked about work for about four days in June and July 1998 that were reflected on the employer's time cards; however, he said that these would likely represent time worked in 1997 not 1998, or perhaps earlier in 1998, because he did not work for them in June or July. The documents appear to have dates that are stamped with a time clock. The evidence also indicated that for a short period of time after the electrical shock incident, the carrier paid temporary income benefits.

Ms. W, who worked for the employer, recalled that claimant reported that he was electrocuted but she connected him to another person with whom the injury was discussed. Ms. W said that claimant would bring medical records by the employer's office, at which time she had the opportunity to observe him. Claimant never had difficulties opening the door to the office nor did he report any problems getting to the office. Ms. W said that one of the claimant's brothers told her that claimant was not really hurt but was trying to get attention.

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 of 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.). 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.- Beaumont 1993, no writ). It is the hearing officer that has the best opportunity to observe the demeanor of testifying witnesses and can assess credibility. Thus, the

decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Accordingly, we affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge