

APPEAL NO. 991062

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 20, 1999. The issues concerned whether the claimant, who is the respondent, sustained carpal tunnel syndrome (CTS) and dizziness and vertigo as part of his compensable injury of _____. The hearing officer found that the injury extended to and included those conditions.

The appellant (carrier) has appealed, focusing primarily upon evidence that it says shows that claimant's account of how the accident happened was not consistent and did not involve a fall onto his hands (causing the CTS), or striking his head, resulting in a concussion and related dizziness. The carrier points out that there is medical opinion relating the dizziness to medical conditions other than traumatic injury. The claimant responds that the disputed findings and conclusions involve weighing of conflicting evidence that is within the hearing officer's sole purview.

DECISION

Affirmed.

The claimant worked as a truck driver for (employer) on _____. He said that as he was unloading items on a rainy, stormy day, he jumped up onto the step of his truck, in a hurry. Claimant said his hand slipped off the railing and he fell backwards. He said that he first struck the vehicle parked beside him, then fell to the ground in a puddle of water. While he began to feel dizziness and the symptoms of what was later diagnosed as CTS shortly after the accident, he said this did not start immediately, and it was primarily his shoulder that was hurting. It was undisputed that carrier accepted liability for a neck injury, right shoulder injury, and depression.

Conflicting evidence was brought out as to the conflict between the claimant's assertions that he reported falling on his hands and knees, or hitting his head, to doctors who did not note it. On his transcribed statement, the claimant said that any omissions in the accounting of the accident were explained by the fact that before he could complete his answer to a question, another question was being asked.

Claimant said he never experienced dizziness (which he said was enough to prevent him from driving) or CTS prior to the incident on _____. Claimant has been examined by various doctors, whose records are in evidence. Dr. K, based upon an assumption that the claimant struck his hands on the ground when he landed on them, asserted that CTS was related to this mechanism of injury. He assessed the cause of the dizziness as outside his area of expertise.

Dr. B, who examined the claimant as part of a required medical examination to evaluate only the claimant's accepted injuries, commented that the claimant could not recall

the exact mechanism of his fall and that he may have hit his head. She stated that he had a normal MRI of his head. Dr. R, a neurologist, found no neurological basis for dizziness and opined that there could be underlying hypoglycemia. Dr. R's reports indicate that claimant's dizziness (compared throughout to motion sickness) was reported as early as April 24, 1997. Dr. L found no reason for the vertigo in August 1998. However, Dr. KY, who was appointed by the Texas Workers' Compensation Commission to evaluate the claimant's vertigo, opined that it was related to a cervicogenic condition, induced by turning the head to the right in a certain position. Dr. KY opined it was "clearly" related to the accident. He indicated that the mechanism leading to this was not necessarily striking the head, but a cervical strain and related muscle spasm, causing a disturbance in blood flow to part of the inner ear. He also opined that some symptoms could be concussion related, although this was outside his expertise as an otolaryngologist. An electronystagmogram was reported in May 1998 as consistent with central vestibular dysfunction.

Resolution on conflicting facts, and assessment of whether it was believable that the claimant fell on his hands or knees, were within the scope of responsibilities of the residing finder of fact, who has had the opportunity to observe the demeanor and testimony of witnesses as we have not. 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).

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.). That does not appear to be the case here, where the record contains evidence that supports the hearing officer's finding of fact.

We accordingly affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Dorian E. Ramirez
Appeals Judge