APPEAL NO. 991334

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 May 27, 1999. The issues at the CCH were whether the _____, injury was a producing cause of the respondent's (claimant) current hands, neck, shoulders, and mid and low back condition; whether the first certification of maximum medical improvement (MMI) and impairment rating (IR) for the claimant's _____, injury had become final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)); whether claimant sustained a compensable injury in the form of an occupational disease on (subsequent date of injury); and whether the claimant had disability resulting from the injury sustained on (subsequent date of injury). The hearing officer found that the claimant's _____, injury was not a producing cause of her current condition; that the first certification for the _____, injury had become final pursuant to Rule 130.5(e); that the claimant sustained a compensable injury in the form of an occupational disease on (subsequent date of injury); and that the claimant had disability resulting from this injury from (subsequent date of injury), through the date of the CCH. The appellant (carrier) files a request for review, arguing that the claimant's current problems are merely a continuation of her _____, injury and that the hearing officer's finding that the claimant sustained a compensable injury on (subsequent date of injury), is contrary to the great weight and preponderance of the evidence. The carrier disputes the fact that the claimant had disability on the basis of her not having suffered a new injury. There is no response from the claimant to the carrier's request for review in the appeal file. Neither party appeals the hearing officer's determination concerning the finality of the MMI and IR certification regarding the _____, injury.

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 summarizes the evidence in his decision and we adopt his rendition of the evidence. We will only briefly touch on the evidence germane to the appeal. The parties stipulated that the claimant sustained a compensable injury on _____. As a result of this injury the claimant underwent carpal tunnel releases to both hands and a surgical arthroplasty resection of the left wrist. Dr. VW certified that the claimant attained MMI on May 30, 1997, with a 14% IR as result of this injury. The claimant returned to work for her employer. There was evidence that she continued to have symptoms from time to time, but that she continued working. The claimant testified that on (subsequent date of injury), while moving prescription pans, she experienced pain in her left hand, arm and shoulder and caught the pans with her right hand. She sought medical treatment the next day. There is medical evidence from Dr. VW, Dr. B and Dr. L that the

claimant sustained a new injury on (subsequent date of injury). There is contrary medical evidence from Dr. M stating that the claimant did not suffer a new 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. We have also held that whether a claimant sustained a new injury or merely suffered a continuation of an original injury is normally a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93515, decided July 26, 1993. Section 410.165(a) provides that the 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 great weight and preponderance 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).

Here, there is testimony from the claimant that she suffered a compensable injury on (subsequent date of injury). While the medical evidence is conflicting, there is medical evidence that the claimant suffered a new injury or merely a continuation of her _____, injury, it was the province of the hearing officer to resolve the conflicts in the medical evidence. With the evidence in this posture there is no basis for us to overturn the hearing officer's determination that the claimant suffered a compensable injury on (subsequent date of injury).

With the sole basis of the carrier's appeal of the hearing officer's finding of disability based on its contention that the claimant did not have a compensable injury, we find no reason to overturn the hearing officer's disability finding when we have found sufficient evidence to support his finding of injury. We also note that there was sufficient evidence in the record in the testimony of the claimant and the medical evidence to support the hearing officer's resolution of the disability issue.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Dorian E. Ramirez
Appeals Judge