

APPEAL NO. 991336

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 24, 1999. The issues concerned whether the claimant (respondent), sustained an injury in the course and scope of employment, and whether he had disability as a result of that injury.

The hearing officer found that claimant injured his shoulder on \_\_\_\_\_, and had disability as a result of the injury beginning on January 13, 1999, and continuing through the date of the CCH.

The appellant (carrier) appeals and argues that the testimony of the claimant concerning the facts underlying the injury was changeable and contradictory, and that the great weight of evidence is against a determination that he injured himself on the job. The carrier asserts that any injury he sustained did not occur at work. The carrier argues that claimant does not have disability because he has no compensable injury. The claimant responds by arguing facts that support the hearing officer's decision.

DECISION

Affirmed.

This is a classic case where the hearing officer, as the sole judge of the weight and credibility of the evidence, was called upon to resolve conflicts that existed in the record. The claimant was a truck driver for (employer), who drove the route from the city of his residence to (city 1) and back. He said that he drove to city 1 during the early morning hours of \_\_\_\_\_, and blew out a tire. This was similar to an incident from January 6th in which another tire blew out and was repaired. The claimant said that at the repair shop, as he was loading the changed tire onto the back of his truck, he slipped. He brought his right arm down to block his fall and his right shoulder jammed. However, claimant thought nothing of it and believed it would resolve.

The claimant initially said that he contacted Ms. D, the safety manager, on Tuesday, and told her his shoulder was hurt. He said she specifically suggested he see a doctor. When questioned on details of this conversation on cross-examination, the claimant then denied he had spoken to Ms. D on Tuesday, and said the conversation in which she advised him to seek medical treatment did not occur until after he had seen a doctor on Wednesday.

According to Ms. D, claimant discussed with her on Tuesday a rather dramatic incident (about which claimant and the dispatcher also testified) in which a part fell from his truck into the river and he went in to retrieve it. She said he gestured a lot with his hands, and did not appear injured or mention injury. Ms. D said that on Wednesday, however, claimant came in to report an injury to his shoulder, which he said occurred in connection

with changing a tire on January 6th, and she told him he could see the company doctor or one of his choice. He came in the next day wearing a shoulder brace and contending he had a dislocated shoulder. Ms. D said she questioned how he could have driven his truck if he had a dislocated shoulder.

Ms. D said that on the following day, she noticed that the claimant had bright pink spots on his nose and lip. They were not there the previous day when he told her he had been injured. Ms. D said that claimant was employed six to eight months prior to the injury, and was a likeable and good employee. She said that she was aware of two fights in which claimant was involved. The first was a mugging incident (which claimant said occurred during December 1998 and was not reported to the police), and then one in which he and his girlfriend were involved, the date of which she could not recall. Ms. D said that while the company had an invoice reflecting charges for tire changing on January 6th, no such invoice could be located for \_\_\_\_\_, the date that the claimant contended subsequently was the actual date of injury.

The claimant denied that a fight had anything to do with his injuries. He said he had a torn rotator cuff injury, had been unable to work since January 13th, and that Dr. S had not released him. Medical evidence in the record supports treatment of a rotator cuff tear by Dr. S. In January 13th notes, Dr. S recorded a history of claimant having fallen off of his truck on \_\_\_\_\_ and being injured in this fashion.

The dispatcher, Mr. P, said that claimant never reported an injury to him when he reported back to headquarters on \_\_\_\_\_. He recalled claimant coming to his window in a sling. The carrier also submitted statements (transcribed interviews) from three other employees that were consistent with Ms. D's and Mr. P's testimony. Ms. D testified that claimant at one point had attributed his shoulder injury to retrieving the truck part from the river.

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).

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).

We accordingly affirm the decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Judy L. Stephens  
Appeals Judge