APPEAL NO. 991380

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 28, 1999. The issues at the CCH were extent of injury and disability. The hearing officer found that the respondent's (claimant herein) compensable injury of _____, included an injury to his right ankle, right knee, and lumbar spine. The hearing officer also found that the claimant had disability from August 4, 1998, through September 8, 1998, as a result of the compensable injury, but that these dates of disability were not exclusive. The hearing officer specifically pointed out in his decision that this was the only period of disability before him on the disability issue as stated and that an issue as to additional periods of disability was not added because the appellant (carrier herein) was not prepared to litigate any other period at the CCH. However, the hearing officer made it clear that his decision was not intended to determine whether or not the claimant had disability for any other periods. The carrier appeals, arguing that there was insufficient evidence to support the hearing officer's finding that the claimant's injury included an injury to his right ankle and lumbar spine. The carrier argued that the claimant's injury was limited to an injury to his right knee. There is no response from the claimant to the carrier's request for review in the appeal file.

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.

It was undisputed that the claimant suffered an injury to his right knee on _____. The claimant described this injury as taking place when he was climbing out of the cab of his truck and he twisted his right knee. The claimant, who had worked as a truck driver for the employer for 20 years, testified he was sent to a doctor by the employer to whom he reported that he had injured his right knee. The claimant testified that a few days later he had pain in his right ankle and low back as well as his right knee. On August 4, 1998, the claimant consulted Dr. M who diagnosed the claimant with acute derangement of the knee, sprains of the ankle and foot, sacroiliac ligament sprain, and suspected displacement of a lumbar intervertebral disc.

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. So is the question of the extent of an injury. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 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).

The carrier contends that in the present case the hearing officer's finding that the claimant's compensable injury included an injury to his right ankle and low back is contrary to the great weight and preponderance of the evidence. The carrier argues that the fact that the claimant did not have immediate symptoms to his back and right ankle placed a heavier burden on him to prove an injury to these body parts, which he failed to meet. Our review of the record shows sufficient evidence to support the findings and decision of the hearing officer.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Susan M. Kelley
Appeals Judge