APPEAL NO. 991482

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 commenced on April 27, 1999, with the record closing on June 11, 1999. The issue at the CCH was whether the compensable injury extended to and included an injury to the cervical spine. The hearing officer concluded that it did not. The appellant (claimant herein) files a request for review challenging several of the hearing officer's findings and contending evidence established that the claimant's injury included an injury to his neck. The respondent (carrier herein) replies that there was conflicting medical evidence and sufficient evidence to support the findings and decision of the hearing officer.

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 and we adopt his rendition of the evidence. We will limit our discussion of the evidence to the evidence directly germane to the appeal. This includes the fact that it was undisputed the claimant suffered a compensable left shoulder injury on _____.[1] There was a great deal of medical evidence concerning whether or not the claimant's injury extended to and included a cervical spine injury. Several doctors expressed the opinion that the claimant's injury did not include an injury to his cervical spine. These included Dr. C, M.D., the carrier's required medical examination doctor; Dr. T, D.C., and Dr. To, D.C., both carrier peer review doctors; and Dr. W, M.D., the designated doctor selected by the Texas Workers' Compensation Commission. Dr. D, D.C., the claimant's treating doctor, expressed the opinion that the claimant's injury included an injury to his cervical spine. Dr. Wi, M.D., a professor of orthopedics at the (Hospital), and Dr. Wr, D.C., a treating doctor referral, expressed the opinion that further diagnostic testing needed to be performed to determine whether the claimant had a cervical injury. There was also support for further diagnostic testing in the report of Dr. W.

At the benefit review conference an interlocutory order was entered requiring the carrier to pay for a cervical MRI. This was performed on April 5, 1999. The record was held open after the CCH and the claimant submitted a June 3, 1999, letter from Dr. Wi which stated as follows:

> [The claimant] has shoulder and neck problems. He should get a neurosurgeon to evaluate his neck. If you have any questions, please feel free to contact me.

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[1]The parties in fact stipulated that the carrier had accepted an injury to the left rotator cuff.

The claimant argues on appeal that Dr. Wi's June 3, 1999, letter constitutes the great weight of the evidence contrary to the hearing officer's decision because of Dr. Wi's qualifications and because he was the only doctor who expressed an opinion concerning the claimant's injury after the cervical MRI was performed.

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).

A finding of injury may be based upon the testimony of the claimant alone. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In the present case, the hearing officer found no cervical injury contrary to the testimony of the claimant and medical evidence supporting this position. However, there was considerable contrary medical evidence. It was the province of the hearing officer in making his factual determination to weigh the relative qualifications of the medical experts and to determine what weight to give their opinions. The claimant had the burden to prove he was injured in the course and scope of his employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden regarding whether his injury included an injury to his cervical spine.

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore
Appeals Judge

CONCUR:

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Philip F. O'Neill
Appeals Judge

_____
Judy L. Stephens
Appeals Judge