

APPEAL NO. 991698

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 July 15, 1999. The issue at the CCH was extent of injury. The hearing officer concluded that the respondent's (claimant herein) cervical injury was a result of her _____, compensable injury, but that her left hip injury, back injury and arthritis were not. The appellant (carrier herein) files a request for review arguing that the hearing officer's determination that the claimant sustained a cervical injury as a result of her _____, compensable injury contrary to the evidence. The claimant responds that this determination was supported by the evidence.

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 summarized 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 claimant testified that on _____, she slipped and fell at work on a wet concrete floor on her hands and knees. The claimant testified that she injured her knees, wrists, hip, back, and neck. The carrier did not dispute an injury to the claimant's knees and wrists. The carrier disputed any relation of the claimant's back, neck, hip and arthritis to the compensable injury. Medical reports at the time of the injury stated that the claimant's neck and back were injured in the fall and Dr. T, the claimant's treating doctor, testified at the CCH that the claimant's injury included an injury to her neck and back. An MRI showed the claimant has a large herniated cervical disc. Dr. P reviewed the claimant's medical records at the request of the carrier and expressed the opinion that the claimant's back and neck problems were not related to her 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. So is the question of the extent of an injury. Appeal No. 93449. 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. Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). 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 an injury to the claimant's cervical spine and this was supported by the testimony of the claimant and medical evidence. While there was contrary medical evidence, it was the province of the hearing officer to resolve the conflicts in the evidence.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge