APPEAL NO. 991729

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 20, 1999. The issues at the CCH were the extent of injury and disability. The hearing officer concluded that the respondent's (claimant herein) compensable left hand injury sustained on _____, extends to her left knee and cervical spine, but does not extend to include right carpal tunnel syndrome and that the claimant had disability beginning on October 26, 1998, and continuing through the date of the CCH. The appellant (carrier herein) files a request for review, arguing that the hearing officer's extent of injury and disability determinations were not sufficiently supported by the evidence. 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.

The hearing officer summarized the evidence in his decision and order and we adopt his rendition of the evidence. We therefore will only briefly touch on the evidence most germane to the appeal. This includes the fact that the claimant testified that on _____, while working as a warehouse manager she tripped over a five-gallon can of paint and fell onto a concrete floor. The claimant testified that as she was falling she tried to break the fall with her left upper extremity, landed on her left hand, twisted around, and ended up on her back. The claimant also testified that her left knee bled from the impact of the fall and was bleeding at the time she reported her injury to her employer. The claimant stated that after the injury her shoulders, back, neck, hands, and arms were hurting, but that she self-medicated and continued to work. The claimant testified that she first sought medical treatment on October 13, 1998. The claimant continued to work until October 26, 1998, when, she stated, that her symptoms worsened and she was unable to perform her duties which had been increased by a layoff of other personnel in the warehouse in which she worked. An MRI dated December 18, 1998, indicated that the claimant has a cervical herniated disc at C4-5. Medical reports from Dr. N and Dr. A related the claimant's neck and hand problems to her compensable injury. There was also medical evidence that the claimant had been placed on an off-work status.

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. 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, it was not disputed that the claimant suffered an injury to her left hand. The hearing officer also found an injury to the claimant's left knee and cervical spine. The finding of a left knee and cervical injury was supported by the testimony of the claimant and medical evidence. The carrier argues that the hearing officer should not have relied upon the testimony of the claimant or medical evidence, arguing that both were not sufficiently reliable. The carrier points very strongly to the delay between the time of the injury and the time of the first medical treatment for it. All of this goes to the weight the hearing officer decided to give the testimony of the claimant and the medical evidence. Applying the proper standard of review set out above, we find no basis for substituting our judgment for the hearing officer's regarding the weight that should be given to the evidence.

Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. Here, there was support for the hearing officer's disability finding in the testimony of the claimant and additional support for the finding in the medical records. The carrier again argues that this evidence was unreliable and insufficient to support the disability finding of the hearing officer. Again, it was the province of the hearing officer to determine what weight to give the evidence.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge