

APPEAL NO. 991766

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 19, 1999, a contested case hearing (CCH) was held. With respect to the issues before her, the hearing officer determined that the respondent (claimant) had disability from his _____, compensable injury beginning August 11, 1998, and continuing through March 22, 1999, and beginning April 23, 1999, and continuing through the date of the CCH. The appellant (self-insured) files a request for review, arguing that the medical evidence is insufficient to support the hearing officer's finding of disability. There is no response from the claimant to the self-insured'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 summarizes the evidence in her decision and we adopt her rendition of the evidence. We will therefore only briefly touch on the evidence most germane to the appeal. It was not disputed that the claimant suffered a compensable injury on _____, while working for the self-insured as a substitute teacher. The claimant testified that this injury took place when a steel window became dislodged and fell, striking him in the right shoulder area. Claimant testified that he was treated by Dr. H and was off work from _____, until he was released to return to light duty in March 1998. After returning to work, the claimant sustained an injury on _____, while breaking up a fight between students. As a result of the April 1998 incident, the claimant suffered injuries to his right jaw, knees, lower back and lower right shoulder area. The claimant testified that he was unable to work during the periods in question due to his _____, injury and there are medical records from Dr. H supporting this. There is also contrary medical evidence attributing the claimant's disability after March 1998, to the _____, compensable injury.

Disability is a question of fact. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Section 410.165(a) provides that the 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).

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. In the present case, the hearing officer's finding of disability finds support in both the testimony of the claimant and the medical evidence. While there is certainly contrary medical evidence, it was the province of the hearing officer to determine what weight to give the conflicting medical evidence. We would also note that evidence of a subsequent injury is not particularly relevant unless the issue is sole cause. See Texas Workers' Compensation Commission Appeal No. 94217, decided March 31, 1994. This is because there may be more than one producing cause of disability and the aggravation of a subsequent injury by a compensable injury is itself compensable. Texas Workers' Compensation Commission Appeal No. 94844, decided August 15, 1994.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. Stephens
Appeals Judge

CONCUR IN THE RESULT:

Tommy W. Lueders
Appeals Judge