APPEAL NO. 991906

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 26, 1999. The issue at the CCH was whether the respondent (claimant herein) sustained a compensable repetitive trauma injury to his lumbar spine on _____. The hearing officer found that the claimant did sustain this injury and the appellant (self-insured herein) files a request for review requesting that we reverse this decision. The self-insured points to evidence supporting its position that the claimant did not suffer a compensable injury and is essentially arguing that the hearing officer's finding of injury was contrary to the evidence. 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 his decision and we adopt his summary of the evidence. We will only brief touch on the evidence germane to the appeal. This includes the fact that the claimant testified that he suffered a repetitive trauma injury at work from operating two sewing machines which he testified were at the wrong height for him to operate. The claimant was diagnosed by Dr. R with a lumbar sprain and strain due to repetitive movement at work.

The self-insured presents a videotape which the claimant's supervisor testified shows another employee operating the workstation at which the claimant asserts he was injured. The self-insured presented testimony from Mr. W, who testified that he has been employed by the self-insured for 13 years, the last of 11 of which he has been an industrial engineer. Mr. W testified that the machines at the claimant's workstation were at a correct height. The self-insured also introduced into evidence a report from Dr. N who stated that after viewing the videotape and visiting the self-insured's plant the claimant did sustain a repetitive trauma injury as claimed.

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. 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). In the present case, the hearing officer found an injury and there was sufficient evidence to support this in the testimony of the claimant and the report of Dr. R. While there was evidence contrary to the hearing officer's finding in the testimony of Mr. W and the report of Dr. N, it was the province of the hearing officer to weigh the conflicting evidence. Based upon our standard of review, we find no basis to reverse the decision of the hearing officer.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge