APPEAL NO. 992693

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 November 9, 1999. The issues at the CCH were injury and disability. The hearing officer concluded that the respondent (claimant herein) sustained a compensable injury on _____, and that the claimant had disability resulting from the injury from _____, to July 18, 1999, and from July 23, 1999, continuing through the date of the CCH. The appellant (carrier herein) filed a request for review, contending that the findings and the decision of the hearing officer were not sufficiently supported by the evidence. The carrier argues that the claimant did not sustain an injury on _____, but continued to suffer from conditions she had previous to that time. The claimant responds that the evidence, including her testimony, supports the hearing officer's finding of injury. The claimant questions whether the carrier's appeal is timely.

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.

We first address the question of the timeliness of the carrier's appeal as it goes to our jurisdiction to consider the appeal. Records of the Texas Workers' Compensation Commission (Commission) show the carrier received the decision of the hearing officer on November 18, 1999. The carrier filed its request for review with the Commission on December 2, 1999. Thus, since the request for review was sent to the Commission within 15 days and it was received within 20 days of the carrier's receiving the hearing officer's decision, the carrier's request for review is timely. *See* Section 410.202(a);Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c).

The claimant testified that she was in a motor vehicle accident (MVA) on (alleged injury date), as she was traveling to clean. The claimant worked for the employer as a house cleaner. The claimant testified that she suffered an injury to her neck, low back, chest, and left arm in the MVA. The claimant described the accident as taking place when her vehicle was hit in the rear. The claimant testified that when this happened her body jerked, her low back snapped, and her chest hit the steering wheel. The claimant testified that she was unable to work due to this injury from June 22, 1999, to July 18, 1999, and from July 23, 1999, continuing through the date of the CCH.

The claimant presented medical evidence from Dr. D and Dr. M who treated her for her injury. The carrier presented medical evidence from Dr. B showing that the claimant had previously been treated for back problems. The claimant testified that she had been involved in a previous MVA in 1992 and had also suffered low back and neck problems during her pregnancy in 1993 or 1994. The claimant testified that she had not injured herself moving a bicycle.

Ms. H, the employer's office manager, testified that on _____, the claimant did not report an injury but did ask to telephone her lawyer. Ms. H testified that the claimant's coworker who was in the same vehicle as the claimant when the accident took place had never reported an injury or missed work.

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).

The carrier argues that the MVA in which the claimant was involved was relatively minor and that the claimant was not injured. The carrier argues that the medical evidence supporting the claimant's assertion of injury is unreliable because the claimant did not give an accurate history of her prior injuries. We note that these arguments go to factual matters and the weight to be given the evidence. These matters were argued at the CCH and the hearing officer, as the finder of fact, found that the claimant suffered an injury.

We do not find the fact that the claimant had previous back problems in and of itself particularly significant. A carrier who seeks to defeat a claim because of a prior injury or preexisting condition has the burden of proving that the prior injury or condition is the sole cause of the claimant's incapacity. Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994; Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). Mere evidence that the claimant has a preexisting condition or injury does not rise to the level of evidence of sole cause.

While the carrier seems to contend that there was something untoward concerning the claimant reporting an injury to her employer, it was undisputed that the injury was timely reported to the employer under Section 409.001. We, therefore, find no basis to overturn the decision of the hearing officer based upon untimely report of injury.

While the carrier challenges the hearing officer's resolution of the disability issue, the only basis for its appeal regarding disability is its contention that the claimant did not sustain a compensable injury. Having found no basis to overturn the hearing officer's finding of injury, we find no merit in the carrier's appeal of the hearing officer's finding of disability.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

CONCUR IN RESULT:

_____
Susan M. Kelley
Appeals Judge