

APPEAL NO. 000002

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 December 6, 1999. The sole issue at the CCH was whether the respondent (claimant herein) sustained a compensable repetitive trauma injury, in the form of tendinitis, on _____. The hearing officer found that the claimant did sustain such an injury. The appellant (carrier herein) files a request for review challenging certain findings of the hearing officer as not being supported by sufficient evidence and pointing to evidence that indicated that the claimant's wrist and elbow problems predated her injury and were related to a prior compensable injury. 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 claimant testified that she was employed as a sewing machine operator and suffered an injury in the form of tendinitis to her left elbow, wrist and hand with a date of injury of _____, as a result of repetitive use of her upper left extremity. The claimant testified that she had suffered a prior compensable injury to her left shoulder for which she had rotator cuff surgery in January of 1998. The claimant further testified that she returned to work in March 1998. As a result of her prior injury the claimant had symptoms running down her left arm. The carrier for the prior injury denied that her prior injury extended beyond her left shoulder. The claimant was treated for both her prior injury and present problems by Dr. C, who stated that her present problems resulted from a _____, repetitive trauma injury and not from her prior shoulder injury. There were records in evidence indicating that prior to _____, Dr. C had sought authorization from the carrier for the prior injury to perform testing to rule out carpal tunnel syndrome.

The carrier challenges the following findings of fact and conclusion of law found in the decision of the hearing officer as not being sufficiently supported by the evidence:

FINDINGS OF FACT

2. Claimant performed repetitive job duties performing her regular job duties sewing for Employer.

* * * *

4. Claimant developed swelling in her left wrist which was diagnosed as tendinitis on January 19, 1999.

5. A preponderance of the medical evidence indicates Claimant has tendinitis in her left hand, wrist and elbow as a result of repetitive use of the arm, wrist and hand.

CONCLUSION OF LAW

3. Claimant suffered an injury on _____ in the form of tendinitis of the left wrist.

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). 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 injury and there was sufficient evidence to support that decision in the testimony of the claimant and the medical evidence. As the carrier points out, there was contrary evidence. It was the province of the hearing officer to resolve the conflicts in the evidence. Also, much of the contrary evidence revolved around the effects of the claimant's prior compensable injury. The fact that the claimant had a prior injury does not in itself prove that she did not suffer a new injury. See Texas Workers' Compensation Commission Appeal No. 94217, decided March 31, 1994. 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 proving sole cause. See Appeal No. 94217, *supra*. There was no sole cause issue in the present case.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Dorian E. Ramirez
Appeals Judge