APPEAL NO. 000067

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 27, 1999. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) compensable injury does not extend to or include a neck injury. In his appeal, the claimant essentially argues that that determination is against the great weight of the evidence. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a fractured left wrist injury when he fell at work on _____, in the course and scope of his employment as a laborer. The claimant testified that he was cleaning a concrete form, that he stepped back, that his foot got caught in the form, and that he fell backwards, catching himself with his left hand. The claimant was diagnosed with a distal radius fracture, which was surgically repaired by Dr. G on June 21, 1997.

In August 1997, the claimant began treating with Dr. S. On August 20, 1997, Dr. S removed the pins that Dr. G had placed in the claimant's wrist. In answers to deposition on written questions, Dr. S stated that he has diagnosed the claimant's neck condition as cervical arthropathy, secondary to a left wrist fracture. Dr. S also stated in his deposition answers that the first documentation of the claimant's cervical problem in his records appears on March 20, 1998. In a December 22, 1998, letter to the carrier, Dr. S stated:

> When [claimant] initially fell, he not only fractured his wrist but also aggravated his neck arthritis. He now has a persistent problem with his neck pain and discomfort and I do feel this is directly related to his injury and should be treated as such.

In a January 26, 1999, letter to the carrier Dr. S stated "[e]ver since I initially saw him, he was not only complaining of his left wrist pain, but also his neck pain, and I do know that both are causally related and should be treated and compensated by a work-related injury." On March 25, 1999, Dr. S sent a letter to a Texas Workers' Compensation Commission (Commission) ombudsman, stating that "there is a very high likelihood of probability of cause and effect that the injury to his wrist jarred and aggravated the cervical arthritis that he had at the time of his injury." In that letter Dr. S noted that the claimant "did mention his cervical pain some time after I started treating him, and he started recovering from his wrist fracture." Dr. S concluded "I can see where he fell and jarred his neck at the same time that he fractured his distal radius. I feel that this [is] a compensable related injury." In a second letter to a Commission ombudsman dated June 24, 1999, Dr. S stated:

> Unfortunately, when he fell, he jarred his neck and aggravated the cervical arthropathy that he most likely had there. This is a causally related injury in that he started to complain of neck pain at the same time that he was recovering from his distal radius fracture.

Dr. B, a Commission-selected required medical examination doctor, examined the claimant to provide an opinion as to whether the claimant's cervical problems are related to the compensable injury. Dr. B concluded "in my opinion, the patient had a pre-existing injury which was a diffuse cervical spine degeneration, which was aggravated by the fall."

The claimant has the burden to prove by a preponderance of the evidence that he sustained a compensable injury and the nature and extent of his injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented the hearing officer with questions of fact for him to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before him. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. The testimony of the claimant, as an interested party, raises only an issue of fact for the hearing officer to resolve. Campos; Burelsmith v. Liberty Mut. Ins. Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant's compensable injury does not extend to or include a neck injury. A review of the hearing officer's decision demonstrates that he simply was not persuaded by the claimant's testimony and the other evidence presented that he sustained an injury to his neck in addition to his left wrist in the fall at work on _____. The hearing officer noted the delay in the onset of the claimant's neck symptoms and emphasized that the opinions of the doctors that the claimant's neck injury was causally related to his fall at work were diminished by the fact that they were premised upon a misunderstanding that the claimant had immediate neck symptoms, which were not borne out in the medical records or the claimant's testimony in which the claimant acknowledged that his neck pain did not manifest until March 1998. Finally, the hearing officer indicated that he was discounting the claimant's testimony that the pain medication he was taking for his wrist "masked" his neck pain because, the prescription records "showed far too few tablets, even at one a day, to extend into March 1998 in order to mask the neck pain that long." The hearing officer, as the fact finder, was free to consider each of the factors he identified in resolving the issue of whether the claimant's compensable injury extended to a neck injury. He was acting within his province in determining that the claimant's evidence simply was not persuasive on the extent-of-injury issue. Our review of the record does not reveal that the hearing officer's determination that the compensable injury does not extend to or include the neck is so

against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The fact that another fact finder could have drawn different inferences from the record, which would have supported a different result, likewise does not provide a basis for us to disturb the hearing officer's decision. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge