

APPEAL NO. 000303

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 January 24, 2000. The issues at the CCH were whether the respondent (claimant herein) sustained a compensable injury on or about _____; and whether the claimant had disability and, if so, for what periods. The hearing officer determined that the claimant sustained a compensable injury on _____; and that the claimant had disability from March 31, 1999, to April 8, 1999, and from October 18, 1999, continuing through the date of the CCH. The appellant (self-insured herein) appeals, contending that the evidence is insufficient to support the hearing officer's findings and conclusions and requesting that we reverse the hearing officer's decision and render a decision in its favor. The appeals file contains no response from the claimant.

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 rendition of the evidence. The claimant testified that on _____, she was injured lifting a bucket while working as a custodian for the self-insured. The claimant testified that she had difficulty obtaining medical treatment due to the denial of her claim by the self-insured. Medical records indicate that the claimant suffered a miscarriage shortly after the incident. The claimant testified that she has had back pain since the incident and that in spite of these problems she continued to work after _____, because she needed money to pay her bills and was assisted in performing her duties by coworkers. The claimant testified that on June 22, 1999, she left the country to care for her father who was ill and returned to the United States on September 7, 1999, after her father's death. The claimant began treating with Dr. F on October 4, 1999. An MRI showed that the claimant had disc protrusion. Dr. F placed the claimant on a light-duty status on October 18, 1999, but the claimant testified she was told that no light duty-work was available for her.

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 based upon the testimony of the claimant and medical evidence. The hearing officer stated that the early medical evidence did not focus on the claimant's back problems, but on her miscarriage. The hearing officer also recognized that there were gaps in the claimant's treatment. The hearing officer accepted the claimant's explanation of these gaps being due to her difficulty in obtaining treatment and her need to travel out of the country due to her father's illness and death. The hearing officer stated that he found the claimant's testimony credible and, as the finder of fact, it was his province to judge the claimant's credibility. The claimant had the burden to prove she was injured in the course and scope of her employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant met this burden.

The carrier argues that the only evidence of disability is the claimant's testimony and that of a doctor who bases his opinion on disability on the history given him by the claimant. Disability is a question of fact to be determined by the hearing officer and may be based on the testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Here, where the hearing officer's finding of disability was supported by the claimant's testimony as well as by medical evidence, we will not reverse, applying our standard of review stated above.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Tommy W. Lueders
Appeals Judge