APPEAL NO. 000363

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case is back before us after our remand in Texas Workers' Compensation Commission Appeal No. 992336, decided December 10, 1999. In Appeal No. 992336 we had reversed the decision of the hearing officer and rendered a new decision in part and remanded in part. We rendered a decision based upon the hearing officer's findings and the evidence that the appellant (claimant herein) sustained a compensable injury on _____. We remanded the issues of extent of injury and disability. The hearing officer, _____, states that a hearing on remand was not convened, but that she reviewed the evidence and reconsidered her findings of fact and conclusions of law in light our decision in Appeal No. 992336. The hearing officer issued a new decision on remand in which she concluded that the claimant's compensable injury does not extend to or include an injury to her back, neck, or shoulders and that the claimant had no disability. The claimant appeals contending that she was denied her right to due process by the hearing officer's not holding a hearing on remand, that the evidence showed that her injury does include an injury to her back, neck and shoulders, and that the evidence does establish that the claimant sustained disability. The respondent (carrier herein) replies that the hearing officer did not violate the claimant's right to due process by not holding a hearing of remand and the evidence supported the hearing officer's findings that the claimant's injury did not extend to her lower back, neck and shoulders and that the claimant did not have disability.

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.

No additional evidence was taken on remand, and we summarized the evidence in our decision in Appeal No. 992336, *supra*, as follows:

> The claimant testified she was injured at work on _____, when she tripped and fell on pallets while working for the employer. The claimant testified that she reported her injury the same day and company records confirm this. The claimant testified that she had pain on her right side, but did not seek medical attention because she was not aware that her employer had workers' compensation or what her rights were under workers' compensation law. The claimant testified that after she reported to her employer she continued to have pain from the injury. The claimant testified that she consulted attorneys and was finally told by one attorney that she had the right to see a doctor. In the interim the claimant was involved in an altercation at work with a supervisor on May 13, 1999. On May 19, 1999, the claimant was sent by the employer to Dr. S, M.D., who diagnosed

"back/buttock contusion" and "contusion of hip" on his Initial Medical Report (TWCC-61). Dr. S released the claimant to light duty and prescribed two medications and physical therapy. The claimant testified that the employer told her she could not return to work until she received a full release. There was evidence that the claimant indicated to the employer she was unable to work because she was taking medication. The claimant began seeing Dr. J, D.C., who reported the claimant had problems with her back, neck and shoulders due to her injury. The claimant testified that when she was released to return to work by Dr. J she returned to work for the employer on light duty. The claimant testified that after returning to work she was terminated because she refused to sign a statement concerning the altercation with the supervisor on May 13, 1999, that the claimant considered inaccurate. The claimant began working for another company in late June 1999. The claimant went to a benefit review conference (BRC) on July 15, 1999, where an interlocutory order was entered ordering the carrier to pay benefits. The claimant did not appear at a CCH [contested case hearing] scheduled on September 7, 1999. The claimant testified that she did not appear because she and her daughter were ill. An order was entered on September 7, 1999, reversing the interlocutory order.

We first address the issue of due process. The claimant contends that the hearing officer canceled a hearing on remand that was scheduled and that this prevented the claimant from putting on additional evidence, violating her constitutional right to due process. We have previously held that the Appeals Panel has no jurisdiction concerning constitutional questions. *See* Texas Workers' Compensation Commission Appeal No. 93556, decided August 18, 1993. We also note that in our decision in Appeal No. 992336, *supra*, we did not direct the hearing officer to hold a hearing on remand. We have previously held that a remand does not, in each and every case, necessitate another hearing. Texas Workers' Compensation Commission Appeal No. 980468, decided April 15, 1998; Texas Workers' Compensation Commission Appeal No. 92063, decided April 1, 1992.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 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 the claimant's injury did not include an injury to her back, neck, or shoulders contrary to the testimony of the claimant and medical evidence. 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 failed to meet this burden in regard to proving an injury to her back, neck, or shoulders. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Disability is also a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. A finding of disability may be based upon the testimony of the claimant alone. Appeal No. 93560. However, the testimony of the claimant does not necessitate a finding of disability. Based on the evidence in the record taken at the hearing on October 6, 1999, and in light of our standard of review stated above, we do not find error in the hearing officer's finding of no disability. We do note that the hearing officer did not have jurisdiction to determine disability beyond the date of the October 6, 1999, CCH. *See* Texas Workers' Compensation Commission Appeal No. 931049, decided December 31, 1993.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge