

APPEAL NO. 000758

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 March 15, 2000. The hearing officer determined that the appellant (claimant) sustained a compensable injury on _____; and that claimant had disability from October 16, 1999, through November 3, 1999. The claimant appeals, arguing that his disability continued from November 3, 1999, through the date of the CCH. The respondent (carrier) replies that the claimant was released to return to work on November 3, 1999, and that the decision of the hearing officer was supported by this as well as other evidence. Neither party appeals the hearing officer's finding of injury and this determination has become final pursuant to Section 410.169.

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 summarized the evidence in his decision and we adopt his rendition of the evidence. The claimant testified that he was injured on _____, when he hit his head on the rearview mirror of a track-hoe (a large backhoe) he was operating at work. The claimant testified that he reported his injury the following Monday and was taken by his employer to Dr. W, the company doctor. Dr. W released the claimant to full-duty work without restrictions on November 3, 1999. The claimant sought treatment with Dr. D, who placed the claimant on an off-work status on November 8, 1999. The claimant was examined by Dr. R, who stated in a report dated February 4, 2000, that the claimant was able to work without restrictions. The claimant testified that he was unable to work due to his injuries from October 16, 1999, through the date of the CCH.

Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 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).

Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. 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 no disability from November 3, 1999, through the date of the CCH. We cannot say that the hearing officer was incorrect as a matter of law in finding this. 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.).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge