APPEAL NO. 001113

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 April 20, 2000. The hearing officer determined that the respondent (claimant herein) sustained a compensable injury on _____, and had disability from September 1, 1999, through the date of the CCH. The appellant (carrier) files a request for review, arguing that the evidence is contrary to the findings of injury and disability by the hearing officer. The appeal file does not contain a 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 and his rationale for his decision as follows in the portion of his decision entitled "Statement of the Evidence and Discussion":

> On _____, Claimant was shoveling in a ditch when he was struck in the back by a back hoe. Claimant worked until August 6, 1999, and asserts disability to the present. Claimant is credible and persuasive that the scoop hit him in the back causing him to twist and exert pressure in his spinal column causing an injury to his low back. Claimant was examined and treated at (clinic) at [Dr. Bo] clinic. Each of these health care providers document the history testified to by Claimant and took Claimant off work. Carrier asserts that there are discrepancies in Claimant's version of the incident. Carrier asserts that testimony about Claimant's being told by [Dr.Br] that nothing was wrong make Claimant neither credible nor persuasive. All inconsistencies can be resolved in Claimant's favor. Claimant speaks Spanish and has had difficulty communicating even to the extent that he and his lawyer vary on their understanding of events. It is apparent that Claimant's understanding that [Dr. Br] told him that nothing was wrong is based on [Dr. Br's] finding no indication of injury in X-Rays. [Dr. Br] prescribed medication for claimant. On the issue of disability, it is unclear whether Claimant worked through the end of August, 1999. Therefore, Claimant will be found to have disability from September 1, 1999, to the present. The evidence preponderates in Claimant's favor on both issues.

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).

In the present case, the carrier argues that the claimant had provided contradictory descriptions of his injury. This was a matter for the hearing officer to consider in determining the claimant's credibility. It is apparent from the hearing officer's discussion quoted above that he considered this matter and determined that the claimant was credible. 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). Applying the standard of appellate review set out above, we find sufficient evidence to support the hearing officer's finding of injury.

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. The carrier argues that medical evidence shows the claimant did not have disability. The medical evidence in regard to disability is in conflict and it was the province of the hearing officer to resolve the conflicting medical evidence. In any case, the claimant's testimony was sufficient to support the hearing officer's finding of disability.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Section Manager