APPEAL NO. 001139

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 25, 2000. The hearing officer determined that the compensable injury does not extend to the appellant's (claimant herein) neck, left shoulder, left arm, groin, left leg, or left hip; that claimant did not have disability from January 3, 2000, to the date of the CCH; and that the Texas Workers' Compensation Commission did not abuse its discretion in approving an alternate doctor. The claimant appeals, arguing that the evidence was contrary to the finding of the hearing officer that the claimant did not have disability from January 3, 2000, to the present. The respondent (carrier herein) replies that the hearing officer's disability determination was supported by the evidence. Neither party appeals the hearing officer's extent-of-injury determination. While the carrier in its response complains the claimant did not change doctors for a proper reason, its response to the claimant's request for review is untimely to act as an appeal and thus the issue of alternate doctor is not before us on appeal.

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.

In his appeal, the claimant expresses agreement with the hearing officer's statement of the evidence and we adopt the hearing officer's rendition of the evidence. Thus, we will only briefly summarize the evidence germane to the issue before us on appeal. This includes testimony by the claimant that he was injured on August 6, 1999. The claimant testified that he was unable to obtain and retain employment after January 3, 2000, and medical records from Dr. P, the claimant's treating doctor, support this contention. The carrier points to the fact that the claimant had been released to return to work by Dr. G, who treated the claimant prior to his changing doctors to Dr. P.

Disability is a question of fact. 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). Applying this standard of review, we find sufficient evidence to support the decision of the hearing officer.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge