APPEAL NO. 001148

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 11, 2000. The hearing officer determined that the respondent (claimant herein) did sustain a compensable injury and had good cause for not timely notifying his employer of his injury. The appellant (carrier herein) files a request for review, contending that the evidence was contrary to the hearing officer's finding of injury and that the hearing officer erred by finding good cause for the claimant's delay in reporting his injury. The claimant responds that the hearing officer's findings were supported by the evidence and are legally correct.

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 claimant testified that he suffered an injury at work on _____, when he struck his forehead as he entered a truck he was unloading. The claimant testified that he suffered symptoms but trivialized his injury and continued to work. The claimant testified that his symptoms became worse and he sought medical treatment on January 3, 2000. The claimant was diagnosed with a possible cervical disc herniation. The claimant testified that he tried to report his injury on January 3, 2000, but that his supervisor was on vacation. The claimant testified that he reported his injury to his supervisor on January 4, 2000.

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).

Generally, corroboration of an injury is not required and may be found based upon a claimant's testimony 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's finding of injury was supported by both the claimant's testimony and medical evidence. The carrier points to alleged inconsistencies between the claimant's earlier statement and his testimony at the CCH concerning injury. These were matters for the hearing officer to consider in making her factual determination. Applying the standard of review discussed above, we find sufficient evidence to support the hearing officer's finding of injury.

The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. The 1989 Act provides that a determination by the Texas Workers' Compensation Commission that good cause exists for failure to provide notice of injury to an employer in a timely manner or actual knowledge of the injury by the employer can relieve the claimant of the requirement to report the injury. Section 409.002. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ).

In the present case, the hearing officer found as a matter of fact that the claimant had good cause for reporting his _____, injury on January 4, 2000. We cannot say that the hearing officer abused her discretion in making this finding in light of the testimony that he trivialized his injury until he sought medical treatment. Texas Workers' Compensation Commission Appeal No. 94114, decided March 3, 1994.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Dorian E. Ramirez
Appeals Judge

Judy L. Stephens
Appeals Judge