APPEAL NO. 001205

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 4, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, while in the course and scope of employment; and that the claimant has had disability from August 21 through November 2, 1999, and from March 30 through April 30, 2000. The appellant (carrier) appeals, contending that these findings were contrary to the evidence. The carrier argues that the claimant was not in the course and scope of his employment at the time of his alleged injury; that his condition is the result of a preexisting condition; and that the claimant did not have disability for both of the periods found by the hearing officer. The carrier also points to a discrepancy in the dates of disability in the hearing officer's decision. The appeal file does not contain a response from the claimant.

DECISION

We reform the hearing officer's decision to read "April 30, 2000," wherever it reads "April 30, 1999." 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 as reformed.

The hearing officer summarizes the facts of the case and explains the rationale for her decision as follows in the section of the decision labeled "Statement of the Evidence":

> The first disputed issue is whether the Claimant sustained a compensable injury on 08-20-99. At the time of the claimed injury, Claimant was working as an Express Check-In Agent for this [airport]. Claimant offered his testimony that his job duties required him to check in bags. His immediate supervisor, [Mr. Y] testified that Claimant's job duties were basically the same as [airline] agents, and that he checked in customers who already had a ticket, by basically just checking in the baggage.
>
> [Mr. Y] and [Ms. D], (who was the Safety Injury Coordinator for this Employer at the time of the claimed injury) both testified that the weight limit was 50 pounds per bag, and that bag runners normally handled the oversize bags.
>
> Claimant testified that he had worked in this position for about 3 to 4 months, after having been transferred from the Security Department, and that he normally worked 6 days per week, from 1:30 p.m. until 10 p.m., earning $7.50 per hour.
>
> Claimant also testified that he had previously been instructed by a Mr. R., who was a supervisor, not on duty at the time of the claimed injury, to assist [airline] employees such as [Ms. M], if requested, with baggage.

On 08-20-99, [airline] employee [Ms. M] asked Claimant to assist her by lifting a heavy bag (Claimant estimated its weight at about 70 to 80 pounds). When Claimant lifted the bag, her [sic] injured his low back. Claimant was taken to a local emergency room on _____, and diagnosed with a low back (lumbosacral) sprain, with instructions that he could return to modified duty on 08-22-99, with restrictions of no lifting, bending or twisting, and instructed to seek follow-up medical care.

On 08-26-99, Claimant began treating with [Dr. P], who diagnosed a herniated nucleus pulposus, and took him off work completely. On 08-26-99, Employer sent Claimant a letter offering a temporary light duty position as a Door Guard. This written offer was never delivered to Claimant, and sometime after 08-26-99, [Ms. D] contacted Claimant after three prior attempts and offered him a light duty position. Claimant informed [Ms. D] he was physically unable to perform the offered position, and was seeking additional medical care. Claimant was released to light duty by a doctor at [hospital] on or about 11-03-99, and returned to light duty work for this Employer until 12-17-99, at which time Claimant left the country for _____ to attend the funeral of his grandfather.

When Claimant returned to the United States, he contacted his Employer about returning to work, and since it was company policy that after an absence of 30 days, an Employee had to reapply, Claimant reapplied, and had to take a drugscreen [sic], but according to [Ms. D] he tested positive for marijuana, and was unable to be reinstated.

According to Claimant, the reason he did not pass the drug test was because he was taking prescription medicines, Hydrocodone and Vicodin. The letter denying employment (Cr. Ex. #8) is dated 03-06-2000.

Claimant began employment elsewhere in March of 2000, but was taken off work from 03-30-00 until 04-30-00 because of his work-related injury. (See [hospital] medical records, Cr. Ex. #11, pp. 49, 50 and 51).

Carrier argues this is nothing more than a preexisting back condition, for which Claimant had been previously treating. However, Carrier has been unable to carry its burden with respect to a preexisting condition being the sole cause. The credible evidence is that on 08-20-99, Claimant injured his low back, while in the course and scope of his Employer [sic]. Claimant has also established disability for the time periods claimed.

Even though all of the evidence presented is not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence.

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 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). Here, the claimant testified to an injury and the existence of his injury is corroborated by medical evidence. The carrier argues that the claimant's prior injury is the sole cause of the claimant's condition. A carrier who seeks to defeat a claim because of a prior injury has the burden of proving that the prior injury is the sole cause of the claimant's condition. Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994; Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). Sole cause also presents a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94212, decided April 4, 1994. Applying the standard of review discussed above, we find sufficient evidence to support the hearing officer's finding of injury.

The carrier argues that any injury suffered by the claimant was not in the course and scope of his employment because he was not furthering the employer's interest. The carrier presented evidence that the claimant was not required to assist employees of the airline with bags. The claimant testified that he had been instructed by his supervisor to do so. There was conflicting evidence as to the claimant's duties and it was up to the hearing officer to resolve this conflict. As the finder of fact she could believe the claimant's testimony that he had been instructed by his supervisor to assist employees of the airline to move baggage which would clearly bring his injury in the ambit of the course and scope of his employment.

The carrier argues that even if the hearing officer was correct in finding injury, she erred in finding disability during the period of March 30 through April 30, 2000.[1] Disability is a question of fact. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. 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. Applying our standard of review, the hearing officer could find the claimant had disability from March 30 through April 30, 2000. We do note, as the carrier points out, that there is a discrepancy in the hearing officer's decision. In her factual findings she finds an inability to work from March 30 through April 30, 2000, but in her conclusions of law and in her order she uses the period of March 30 through April 30, 1999. Clearly this is a typographical error and we reform the decision of the hearing officer to read "April 30, 2000" wherever it says "April 30, 1999."

The decision and order of the hearing officer are affirmed as reformed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge

[1]We note that the carrier does not argue that if the claimant suffered a compensable injury that the hearing officer erred by finding disability from August 21 through November 2, 1999.