APPEAL NO. 001528

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 June 5, 2000. The issues at the CCH were extent of injury, waiver of compensability by the respondent/cross appellant (carrier herein), the identity of the appellant/cross-respondent's (claimant herein) treating doctor and disability. The hearing officer determined that on June 30, 1999, the claimant suffered a bilateral upper extremity injury but did not injure her cervical spine or left shoulder; that the carrier did not waive its right to contest the compensability of the claimant's cervical spine, left hand, and left shoulder; that the claimant's treating doctor is Dr. H; and that the claimant had disability from June 30, 1999, through June 5, 2000. The claimant appeals, contending that her injury included an injury to her cervical spine and left shoulder. The carrier responded that the hearing officer's finding that the claimant's injury did not include a cervical spine or left shoulder injury is supported by the evidence. The carrier appeals the hearing officer's determinations that the claimant's injury included an injury to her left hand; that Dr. H was the claimant's treating doctor; and that the claimant suffered disability from June 30, 1999, through June 5, 2000. The carrier challenges a number of the hearing officer's factual findings as being contrary to the evidence and argues that there was, at most, evidence of disability from October 12, 1999, through November 29, 1999.

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 in his decision. We will only briefly touch on the evidence germane to the appeal. The claimant testified that she worked on a production line and was required to wrap coils with insulated tape. The claimant contended that as a result of repetitive trauma she suffered injury to her cervical spine, left shoulder, and both hands. The carrier acknowledged that the claimant sustained a right upper extremity injury but denied the claimant suffered the other injuries she asserted. The claimant contended that Dr. H was her treating doctor; the carrier contended Dr. F was the claimant's treating doctor. It was undisputed that Dr. F and Dr. H had been associated in the same practice but had severed that association, setting up different offices. There was conflicting evidence as to whether the claimant had ever been treated Dr. F but had only been seen by Dr. H.

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. This is also true of the extent of an injury. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 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).

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). 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 an injury to the claimant's left hand but no injury to the claimant's left shoulder or cervical spine. It was undisputed that the claimant had suffered an injury to her right hand. There was conflicting evidence as to the extent of the claimant's injury and it was the province of the hearing officer to resolve the conflicts in the evidence. We find the hearing officer’s determination of the extent of the claimant's injury was sufficiently supported by the evidence.

As far as the question of the identity of the claimant's treating doctor, the carrier argues that Dr. F is the claimant's treating doctor, while the claimant contends that Dr. H is her treating doctor. It was undisputed that Dr. F and Dr. H had been associated in practice and that they had severed that association, setting up different offices. There was conflicting evidence as to whether the claimant had ever treated with Dr. F or had only been seen by Dr. H. Under these circumstances, we find no abuse of discretion in the hearing officer's finding that Dr. H was the claimant's treating doctor.

Disability is a question of fact to be determined by the hearing officer and may be based upon the testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The carrier argues that the hearing officer erred in the period of disability he found. We find sufficient evidence in the claimant's testimony to support the hearing officer's disability finding.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge