APPEAL NO. 001593

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 June 23, 2000. The hearing officer determined that the appellant (claimant herein) did not sustain a compensable injury in the form of an occupational disease on any of the dates alleged; that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election of remedies; and that the claimant did not have disability because there was no compensable injury. The claimant appeals, requesting we review her case. The respondent (carrier herein) responds that the claimant's appeal is insufficient to invoke our jurisdiction and that there is sufficient evidence to support the decision of the hearing officer.

DECISION

Finding our jurisdiction has been invoked, 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 carrier alleges that the claimant's request for review, which only asks us to review the decision of the hearing officer, fails to invoke the jurisdiction of the Appeals Panel because it fails to rebut the decision of the hearing officer, fails to state grounds for review and fails to specify what relief is sought by the claimant. The carrier argues that such a request for review does not meet the requirements of Section 410.202(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(2) (Rule 143.3(a)(2)). Early on and repeatedly since, we have held that no particular form of appeal is required and that an appeal, even though terse or inartfully worded, will be considered. Texas Workers' Compensation Commission Appeal No. 91131, decided February 12, 1992; Texas Workers' Compensation Commission Appeal No. 93040, decided March 1, 1993, and decisions cited therein. We have also held that appeals which lack specificity will be treated as attacks on the sufficiency of the evidence. Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. We consider the claimant's appeal an attack on the sufficiency of the evidence supporting the hearing officer's resolution of the only two interrelated issues upon which his decision was adverse to her--the issues of injury and disability.

The claimant testified that she suffered an injury to her neck and back on _____, from repetitively loading and unloading groceries at work. The carrier argued that the claimant showed no causal link between her employment and her asserted injuries and that the claimant only asserted an injury after she realized her employment was in jeopardy. In response to a February 4, 2000, letter from the claimant's ombudsman, the claimant's treating doctor, Dr. J, stated that the claimant never reported that her neck and back problems were related to her work.

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).

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 no injury contrary to the testimony of the claimant. The claimant had the burden to prove she was injured in the course and scope of her employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden.

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition, disability depends upon a compensable injury. *See* Section 401.011(16).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge