APPEAL NO. 001680

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 respondent's (claimant herein) depression is a result of the compensable injury sustained on _____. The appellant (carrier herein) files a request for review, arguing that the great weight and preponderance of the evidence is contrary to the finding of the hearing officer that the claimant's depression is a result of his compensable injury. There is no response from the claimant in the appeal file.

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 sets out the relevant evidence in his decision and we adopt his rendition of the evidence. We will only briefly touch on the evidence germane to the appeal. This includes the fact that the parties stipulated that on _____, the claimant sustained a compensable injury. There was evidence that the claimant's injury was to his cervical and lumbar spine as a result of repeated lifting of 70-pound coils. Medical evidence showed that, as result of his injury, the claimant has undergone a lumbar fusion and three-level cervical fusion.

There is evidence that the claimant is suffering from depression as a result of his injury. Dr. F states as follows in a report dated April 24, 2000:

> There is no history of mental health counseling or psychiatric hospitalizations in the past. It is my opinion as his treating physician and I believe I speak on behalf of the surgeon, who recommended [Ms. R] evaluation that his depression is specifically and directly related to his on the job injury, the protracted nature of his recovery and the significant general impact this has all had on him.

Ms. R, who is the clinical director of behavioral medicine at _____, stated as follows in a letter dated June 13, 2000:

> Since his injury, [the claimant's] pain has set up a domino effect in many areas of his life. He could not return to work and has experienced extreme financial stress. He cannot function normally in routine or leisure activities; has difficulty walking or sitting for prolong [sic] periods; is limited in long distance car travel, and his relationships with friends and family members have been adversely effected. Any one of these life-style changes, when combined with chronic pain could be depressing. In combination, it is natural that the patient would become depressed. Since he denies depressive

symptoms prior to his injury, and was functioning within normal limits, it is only reasonable to conclude that both his impaired daily functioning and the onset of clinical depression are directly related to his compensable, work-related injury and the resulting life-style changes.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. We have also held that the question of whether a "follow-on" injury resulted from the compensable injury is one of fact. Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 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, we find sufficient evidence to support the finding of the hearing officer that the claimant's depression resulted from his compensable injury.

While not altogether clear, the carrier appears to argue that we have required a showing that depression arose at the time of the compensable injury to prove that it is part of the compensable injury. Such a test would preclude "follow-on" psychological injuries, the finding of which we have affirmed on many occasions. We have specifically rejected such a test in Texas Workers' Compensation Commission Appeal No. 992551, decided December 29, 1999 (Unpublished).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge