APPEAL NO. 001780

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 29, 2000. The hearing officer determined that the appellant's (claimant) compensable wrist injury does not extend to nor include any shoulder or neck injury; and that the claimant had disability from his wrist injury from February 2 through February 14, 2000.

The claimant appealed and argued facts that he believes support his contention that his shoulder and neck were injured while lifting a bucket, in addition to his wrist. The claimant argues that due to all three injuries, he had disability. The claimant complains of a "diagnosis" made by the hearing officer that is not supported by evidence in the record. The respondent (carrier) responded that the decision is supported by the evidence.

DECISION

We affirm the hearing officer's decision.

The claimant said that he injured himself on _____, when he lifted a full five-gallon bucket of water to empty into a mop bucket. He said that this bucket weighed 35 to 40 pounds. The claimant said he felt a popping in his shoulder, not his wrist. He said he did not report the injury to the employer at the time it happened, but he did call the next day. The claimant went to see the doctor who had previously treated a 1999 wrist injury, Dr. D.

There was considerable conflict over whether the claimant experienced or reported a popping in his shoulder. The claimant contended he reported neck and shoulder pain and popping as part of his history of the accident. However, the first record of Dr. D from February 3, 2000, records a complaint of a sharp pop in the right wrist while mopping. Dr. D noted swelling at the wrist. There is no mention of shoulder or neck pain, and the claimant was put into a cast. On February 14, 2000, Dr. D said that the claimant drew to his attention shoulder and neck pain that he says actually developed "previously." Dr. D's note on this day states that it is more likely due to a separate injury that might be from mopping. The claimant was released to sedentary duties from the standpoint of the wrist only. In answers to interrogatories, Dr. D said that if the claimant had reported neck and shoulder pain on his first visit, he, Dr. D, would have reported it.

The claimant was referred to Dr. G, who noted that x-rays showed a past cervical fusion and an osteophyte on the distal clavicle, and that with the history of a pop, this could even represent a fracture. The claimant was found to have limited range of motion of his shoulder and tenderness over the shoulder blade. Dr. G took the claimant off work for a period from February 24 through March 31, 2000, and then for a subsequent period. On June 21, 2000, a possible rotator cuff tear was diagnosed by another doctor, with the recommendation than an MRI be done.

The claimant called his supervisor, Mr. S, on February 2, 2000, and reported a popping and hurt wrist. Similar testimony was given by another supervisor, Mr. A. Neither a shoulder nor neck injury was reported until later. Mr S testified that the bucket the claimant was using was a two-gallon bucket, weighing about 10 to 15 pounds at most.

We agree that the speculative comment in the hearing officer's discussion regarding osteophyte formation as indicative of a long-standing condition is not supported by the evidence, and, in fact, Dr. G noted that this could be related to a fracture. However, we cannot conclude that the hearing officer found against the claimant based solely upon this supposition. It was clear that he chose not to believe the claimant's assertion that he popped his shoulder on _____. Although the record indicates that the claimant could return only to sedentary duty on February 14, 2000, which is evidence that disability continued, the doctor's release was not dispositive.

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 of 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.). 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.- Beaumont 1993, no writ).

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We accordingly affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Robert W. Potts
Appeals Judge