

APPEAL NO. 001893

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 July 14, 2000. With regard to the issue before him the hearing officer determined that at the time of his injury M & M was the respondent's (claimant herein) employer. The appellant (carrier herein) files a request for review contending that this determination was contrary to the evidence. The claimant responds that the decision of the hearing officer was supported by the evidence.

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 summarized the evidence and the rationale for his decision as follows in the portion of his decision entitled, "Statement of the Evidence and Discussion":

On _____, Claimant suffered a serious electrical shock for which the fact of injury is not disputed. Carrier asserts that Claimant was not an employee of [M & M], the covered employer. Instead, Carrier asserts that Claimant was an employee of [Mr. D] who is alleged to be a non-covered sub-contractor. Claimant is credible that he was hired by [Mr. M], owner of [M & M], and did not know [Mr. M] until he was performing work for [M & M]. Claimant's testimony establishes control by [Mr. M] and supply of material by [Mr. M]. [Mr. M] originally acknowledged that Claimant was an employee of [M & M]. Thereafter, [Mr. M] changed his story and produced documents which appear to be a sham to defeat coverage under the workers' compensation policy in effect for [M & M]. Even checks issued to [Mr. D] have inconsistent endorsements suggesting endorsement by [Mr. M]. All credible evidence preponderates in Claimant's favor that he was an employee of [M & M].

The carrier points to evidence contrary to the hearing officer's decision, It specifically points to testimony by Mr. A, the carrier's claims representative, concerning his investigation of the case and argues that the evidence shows that the claimant's work was controlled by Mr. D as well as showing that the claimant was never paid by M & M.

There are certainly inconsistencies in the records of M & M and inconsistent statements by Mr. M, as the carrier points out. 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 (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 (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 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company 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 or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Applying this standard, we cannot say the hearing officer erred. He could choose to give greater weight to those statements by Mr. M, which indicated that the claimant was an employee of M & M rather than those to the contrary. It was up to the hearing officer to resolve the conflicts in the documentary evidence. The hearing officer also found the testimony of the claimant credible and could have relied upon it in reaching his decision. We find sufficient evidence to support the factual determinations of the hearing officer and we find his factual findings supported his legal conclusions.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge