APPEAL NO. 001911

Following a contested case hearing (CCH) held on July 27, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the appellant (claimant herein) suffered an injury to her right eye, but not to her right ear and sinus cavity. The claimant appeals arguing that the medical evidence established that she suffered an injury to her right ear and sinus cavity. The respondent (carrier herein) replies that there is sufficient evidence to support the decision of the hearing officer.

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 her decision and we adopt her summary of the evidence. The claimant testified that after working with microchips she took off her eye wear and touched her right eye with her left hand. The claimant testified that her eye swelled and she went to the onsite health care center where her eye was flushed and testing showed that she had hydroflouric acid in her right eye. There was conflicting medical evidence as to whether the exposure to hydroflouric acid caused problems with the claimant's right ear and sinus cavity. Dr. S testified that he believed that the hydroflouic acid had to cause the claimant's nasal and ear problems. The carrier presented contrary medical evidence.

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 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). Where the matter of causation is not an area of common experience, expert or scientific evidence may be essential to satisfactorily establish the link or causation between the injury and the employment. Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992. In the present case, the hearing officer found no causal relationship between the claimant's injury and her right ear and sinus problems. There was conflicting medical evidence regarding this. It was the province of the hearing officer to resolve the conflicts in the evidence. The claimant contend that Dr. S was more qualified to give an opinion as to causality than the experts who expressed an opinion contrary to his. It was up to the hearing officer to determine the weight to be given to the evidence. A factor that she considered was Dr. S's lack of familiarity with the claimant's prior ear and sinus problems. We cannot say that the hearing officer was incorrect as a matter of law in reaching the conclusions she did. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge