

APPEAL NO. 002424

Following a contested case hearing (CCH) held on September 28, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant's (claimant herein) compensable injury does not extend to his cervical and thoracic spine and that the claimant did not have disability from March 8, 2000, to the date of the CCH. The claimant appeals contending the hearing officer's decision was contrary to the evidence. The claimant also complains that he was unable to get a copy of the surveillance tape showing his injury because this evidence had been destroyed. The respondent (carrier herein) replies that there is sufficient evidence to support the hearing officer's findings as to the extent of the claimant's injury and disability. The carrier argues that the hearing officer's findings regarding the extent of injury and disability are supported by the evidence. The carrier also argues that the employer merely reused the surveillance tape after a few days, which was the employer's general practice.

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 parties stipulated that on _____, the claimant sustained a compensable injury to his lumbar spine, right shoulder and right wrist. The claimant contended that his injury extended to an injury of his cervical and thoracic spine. There was conflicting medical evidence concerning the extent of the claimant's injury. It was undisputed that three days after the compensable injury the claimant returned to light-duty employment and continued to work for the employer until April 14, 2000. There is a medical report in evidence from Dr. R releasing him to return to full-duty work on April 14, 2000. There are later reports from Dr. C indicating the claimant has substantial restrictions.

As far as the surveillance tape is concerned, it was a videotape of the workplace for security purposes. It showed the claimant's injury and was reviewed by the claimant and the employer's terminal manager. The terminal manager stated that a few days later the videotape of the claimant's injury was reused. The terminal manager testified that it was the practice of the employer to reuse the tapes after a few days.

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. 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).

Applying this standard of review, we do not find that the overwhelming evidence was contrary to the finding of the hearing officer that the claimant's injury did not extend to his cervical and thoracic spine. The claimant still bears the burden of proving the extent of a compensable injury. In the present case, we do not find that the hearing officer failed to apply the correct legal standard or that the overwhelming evidence is contrary to his factual determinations. 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.).

Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Again, the claimant bears the burden of establishing that a compensable injury was a producing cause of his disability. The claimant argues that he can prove disability by his testimony alone. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. However, the hearing officer is not required to find the claimant's testimony, or for that matter the medical evidence, to be persuasive. While there was evidence of disability in the record, it was still the province of the hearing officer to weigh this evidence and to determine its credibility. Under the facts of this case, we do not perceive legal error in the hearing officer's resolution of the disability issue. Again, this is true even though another fact finder may have reached another result.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge