APPEAL NO. 002449

Following a contested case hearing (CCH) held on September 26, 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 respondent's (claimant herein) compensable injury extended to her low back and thoracic spine and that the carrier did not waive the compensability of the claimant's thoracic and lumbar spine. The appellant (carrier herein) files a request for review arguing that the hearing officer's resolution of the extent-of-injury question was contrary to the evidence. The claimant responds that the hearing officer's decision was sufficiently 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 parties stipulated that the carrier accepted liability for the claimant's _____, cervical sprain. The claimant testified that she was injured while working as a truck driver when another vehicle ran a red light and struck the truck she was operating. The claimant testified that she was treated in an emergency room and diagnosed with neck and upper back problems. The claimant testified her low back was also injured in the accident.

The carrier called an accident investigator to testify that motor vehicle accident in which the claimant was injured was relatively minor. The carrier presented evidence that the claimant had low back pain prior to the accident. The carrier argued that the claimant was relatively asymptomatic at the time of the accident and that the claimant did not present medical evidence showing a thoracic spine injury.

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 great weight and preponderance 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 great weight and preponderance of the evidence was contrary to the finding of the hearing officer that the claimant's injury extended to her lumbar and thoracic spine. In the present case, we do not find that the hearing officer failed to apply the correct legal standard or that the great weight and preponderance of the evidence is contrary to his factual determinations. Generally corroboration of an injury is not required and may be found based upon a claimant's testimony alone. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). A carrier who seeks to defeat a claim because of a prior injury or preexisting condition has the burden of proving that the prior injury or condition is the sole cause of the claimant's condition. Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994; Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). Mere evidence that the claimant has a preexisting condition or injury does not rise to the level of proving sole cause. *See* Texas Workers' Compensation Commission Appeal No. 94217, decided March 31, 1994. There was no sole cause issue in the present case.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge