APPEAL NO. 002836

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On November 7, 2000, a hearing was held. With regard to the contested issue before him, the hearing officer determined that the compensable injury sustained by the appellant (claimant) did not extend to the claimant's lumbar strain.

The claimant appealed, contending that the hearing officer erred in determining that the injury did not extend to his back and requests that the hearing officer's decision be reversed and a new decision rendered in his favor. The file contains no response from the respondent (carrier).

DECISION

Affirmed.

At issue in this case is whether the hearing officer erred in determining that the compensable injury sustained by the claimant did not extend to the claimant's lumbar strain. Conflicting evidence was presented at the hearing regarding the extent of injuries sustained by the claimant on the date of injury. Extent of injury is a question of fact. 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). 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).

In the present case, there is sufficient evidence in the record to support the hearing officer's determination that the compensable injury sustained by the claimant did not extend to an injury to his back. Accordingly, we affirm the decision and the order of the hearing officer.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert F. Potts
Appeals Judge