APPEAL NO. 002917

A contested case hearing (CCH) commenced on November 13, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), with the record closing on December 1, 2000. The hearing officer resolved the disputed issues by determining that the appellant's (claimant herein) injury does not extend to and does not include urological injuries and/or a condition of impotence and that the claimant's impairment rating (IR) is 18%. The claimant appeals, contending that the hearing officer's finding that his injury does not extend to urological injuries and impotence is contrary to the evidence. The claimant argues that the hearing officer should have awarded the 22% IR from the designated doctor, which included 5% whole body impairment for these conditions. The respondent (carrier herein) replies that there was conflicting evidence concerning the extent of injury and that it was proper for the hearing officer to determine the claimant's IR based upon the report of the designated doctor excluding any impairment assessed for the claimant's urological problems and/or impotence. The carrier urges that we affirm 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.

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. In the present case, there is conflicting evidence concerning the claimant's extent of injury. The claimant testified that his injury on _____, included an injury to his groin as he fell and straddled a construction beam. The history in early medical reports indicates that the claimant injured his back when walking on a construction beam when he twisted to regain his balance to keep from falling. Later medical reports include the description of the injury to which the claimant testified at the CCH. There is also conflicting medical evidence concerning the extent of the claimant's injury. Dr. Z, the designated doctor selected by the Texas Workers' Compensation Commission, expresses the opinion that the claimant's injury includes a urological injury. Dr. G, a carrier peer review doctor, expresses a contrary opinion.

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, 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, we find sufficient evidence to support the hearing officer's determination that the claimant's compensable injury did not extend to include urological injuries and/or impotence. 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 issue of IR clearly hinges on the question of extent of injury. The designated doctor assessed the claimant's whole body impairment due to his back injury at 18%. The designated doctor awarded an additional 5% whole body impairment for the claimant's urological injury, combining these assessments to opine that the claimant had a 22% IR as a result of the compensable injury. The hearing officer, having found that the claimant's compensable injury does not extend to or include a urological injury, excludes the amount of impairment the designated doctor assessed for this condition and determines the claimant's IR based solely upon the 18% IR the designated doctor assessed for the claimant's back injury.

We note that while pursuant to Section 408.125(e) the opinion of a designated doctor regarding impairment is entitled to presumptive weight, the designated doctor's opinion concerning the extent of an injury is not entitled to presumptive weight. This was a question for the hearing officer. In light of the hearing officer's resolution of the extent-of-injury issue, we find no error in his determination that the claimant's IR was 18%.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge