APPEAL NO. 002957

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 5, 2000. The hearing officer resolved the disputed issues of intoxication and disability by deciding:

1. The appellant (claimant herein) was not intoxicated at the time he sustained a compensable injury on _____.

2. The claimant did not have disability.

The claimant appeals, contending that the hearing officer's resolution of the disability issue was contrary to the evidence. The respondent (carrier herein) replies that the Appeals Panel should affirm the decision of the hearing officer.

DECISION

Affirmed.

The claimant testified that his compensable injury took place when he was in a motor vehicle accident (MVA) on _____. The claimant was terminated by the employer for refusing to take a drug test. The claimant presented medical evidence that he suffered a low back and neck strain as a result of the MVA. The claimant testified that he had disability as a result of his compensable injury. He also presented medical evidence that he was off work from August 16, 2000, through October 26, 2000, due to his injury. The hearing officer found no period of disability, stating that, based on the evidence, the nature of the injury appeared slight and that the accident appeared minor. The hearing officer also stated that the evidence gave very little indication as to why the injury prevented the claimant from working. The hearing officer determined that under the circumstances he did not find that the claimant met his burden of proving disability.

Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. 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 no error in the hearing officer's finding that the claimant did not have disability. 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:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge