

APPEAL NO. 010162

Following a contested case hearing held December 7, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the respondent (claimant) had disability as a result of her _____, compensable injury beginning April 1, 2000, and continuing. The appellant (self-insured) appealed the hearing officer's determination, alleging that the claimant failed to show that she had disability on April 1, 2000, due to the _____, compensable injury. The claimant did not file a response to this appeal.

DECISION

Affirmed.

The claimant has the burden of proving a compensable injury and disability. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). 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 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The October 9, 2000, letter from Dr. P clearly explains that the claimant was off work because of her job-related neck injury and not because of her cancer surgery and treatment, and the hearing officer could accept that evidence.

The points raised by the self-insured go to the weight and credibility to be given the evidence. The hearing officer had the responsibility to evaluate the evidence and determine what facts had been established. Section 410.165(a). We will reverse a factual determination of a hearing officer only if that determination is so against 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying our standard of review to the resolution of factual issue in this case, we affirm the determination of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge