APPEAL NO. 010939
FILED JUNE 14, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 11, 2001. The hearing officer resolved the issues of injury and disability by determining that the respondent (claimant herein) sustained a compensable injury on _____, and that the claimant had disability from May 24, 2000, continuing through the date of the CCH. The appellant (carrier herein) files a request for review arguing that these determinations were not 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 claimant was involved in a motor vehicle accident (MVA) on _____. At the time of the MVA the claimant was driving the employer's vehicle to a different job site when he was struck by another vehicle. The collision was severe enough to spin the claimant's vehicle around, knock it against a curb, and blow out the rear tires. The claimant testified that a week after the accident he began to have groin pain. On May 8, 2000, the claimant was terminated by the employer as part of a reduction in force. The claimant testified that on May 24, 2000, he awoke and could not get out of bed due to pain. The claimant sought medical attention on that day from Dr. D. Dr. D diagnosed avasular necrosis (AVN) of both hips with a possible fracture of the inferior medial left femoral head. Dr. D attributed the claimant's AVN to past heavy drinking and referred him to Dr. M as Dr. D specialized in treatment of the knee. Dr. M expressed the opinion that the _____, MVA was the cause of the claimant's dysfunction as he believed the accident set the stage for the bilateral femoral head stress fractures which had subsequently reached the level of AVN. The claimant was seen by Dr. R, the carrier's required medical examination order doctor. Dr. R stated that he did not believe the MVA caused the claimant's osteonecrosis, but "it may have been an exacerbating factor."

The claimant testified that he has undergone two surgeries as a result of his injury and that he has been unable to work since May 24, 2000.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 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 overwhelming weight 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).

The carrier argues that the medical evidence is insufficient in this case and cites our opinion in Texas Workers' Compensation Commission Appeal No. 972478, decided January 16, 1998. The claimant points to cases where we have found AVN compensable citing Texas Workers' Compensation Commission Appeal No. 951495, decided October 13, 1995; Texas Workers' Compensation Commission Appeal No. 970349, decided April 14, 1997 (Unpublished); Texas Workers' Compensation Commission Appeal No. 000733, decided May 30, 2000. After reviewing these cases, and applying the standard of factual review above, we find no error in the decision of the hearing officer. We note that we affirmed a similar decision in Texas Workers' Compensation Commission Appeal No. 001709, decided September 7, 2000.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge