

APPEAL NO. 010949  
FILED JUNE 20, 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 was held on April 11, 2001. The hearing officer held that, in addition to his accepted right knee injury, the appellant (claimant) sustained an injury to his right arm but did not prove that he injured his neck and back on \_\_\_\_\_.

The claimant has appealed, arguing that the evidence proves that he also injured his neck and back. There is no response from the respondent (self-insured employer).

DECISION

We affirm the hearing officer's decision and order.

The hearing officer did not err when she determined that the claimant's injury did not extend to his neck and back. The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). The site of the trauma and its immediate effects are not necessarily determinative of the nature and extent of the compensable injury, and the full consequences of the original injury, together with the effects of its treatment, upon the health and body of the worker are to be considered. Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975).

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (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.). 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, as here, 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

In this case, the claimant was carrying a 70-pound roll of plastic on his shoulder, and as he turned to throw it into a trash bin, he slipped on a piece of plastic on the floor and went down onto his right knee. He said he was able to catch himself on the trash bin. The right knee injury was accepted by the self-insured employer but other injuries were not. The claimant said he only spoke Spanish and understood only a little English. His

supervisor, Mr. G, translated for him at the emergency room after his accident. There was testimony elicited about what claimant did, or did not, tell Mr. G about his injury either when he reported the injury or when Mr. G translated for him at the emergency room. After his injury, the claimant treated with the company doctor about half a dozen times.

The claimant's earliest medical records mention only his right knee. He was ultimately found to have lingering pain in his right biceps consistent with a rupture. The claimant had an MRI of his lumbar spine on June 16, 2000, which showed a bulge at L4-5 that effaced on the thecal sac. There was no objective medical evidence presented for a neck injury. The claimant continued to work through June, when he was transferred to another shift and another supervisor.

Although not noted in the decision, Mr. G testified that the claimant only complained of an injury to his right knee after the accident happened. He said that when he translated for the claimant at the hospital, the claimant reported only a right knee injury in response to the questions asked by the health care providers. Mr. G stated that in his conversations with the claimant in the months he continued to work, the claimant never complained about any other body parts being hurt until sometime in June.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the hearing officer's decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

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Robert W. Potts  
Appeals Judge