

APPEAL NO. 011173  
FILED JULY 06, 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 23, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and therefore did not have disability from a compensable injury.

The claimant has appealed and argues that he truthfully testified as to the events that caused his injury. He asks that a statement not put into evidence at the CCH be considered. The respondent (carrier) responds that the hearing officer's resolution of conflicting evidence should not be set aside.

DECISION

Affirmed.

The hearing officer did not err in finding that the claimant did not sustain a compensable injury or have disability therefrom. The claimant contended that he was injured while manually setting a 600-pound drum filled with chemicals on its side. A supervisor testified that such would typically be performed with the use of a dolly. As the hearing officer noted, there was some correlation between the timing of the claimant's contention that he was injured and his inquiry to the Texas Workers' Compensation Commission as to whether he could reopen an older chemical exposure claim. On the other hand, there are medical records from the claimant's treating doctor diagnosing cervical, thoracic, and lumbar strains. A lumbar MRI of November 8, 2000, showed marked degenerative dessication at two levels. The claimant testified that he had not been symptom free, however, prior to the incident in question.

While the claimant asked that we consider a statement from a coworker that was not introduced at the CCH, this statement was not included with the appeal; even if it had been, we will consider only the record developed at the CCH.

The evidence presented a conflict for the hearing officer to resolve as the sole judge of the weight and credibility of 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 of 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.). 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

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 accordingly affirm the decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Elaine M. Chaney  
Appeals Judges