APPEAL NO. 011360
FILED AUGUST 6, 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 May 15, 2001. The issues before the hearing officer were extent of injury, maximum medical improvement (MMI), impairment rating (IR), and disability. With regard to these issues, the hearing officer determined that the respondent's (claimant herein) injury extends to include adhesive capsulitis of the right shoulder; that the claimant reached MMI on December 1, 1999, with an eight percent IR; and that the claimant had disability from May 12, 1999, to December 1, 1999. The appellant (self-insured herein) files a request for review, arguing that the hearing officer's resolution of the extent-of-injury and disability issues was contrary to the evidence. The claimant responds that the hearing officer's extent-of-injury and disability findings were supported by the evidence. Neither party appeals the MMI and IR determinations.

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 hearing officer outlined the evidence and the rationale for his decision in his written decision. There was conflicting evidence as to the issues of extent of injury and disability. Both of these issues are issues of fact. 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. 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). Applying this standard we perceive no error on the part of the hearing officer.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Robert W. Potts
Appeals Judge