

APPEAL NO. 011387  
FILED AUGUST 01, 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 30, 2001. The hearing officer determined that the respondent (claimant) sustained an injury to his neck, left shoulder and left wrist, in addition to his left middle finger, on \_\_\_\_\_. The appellant (carrier) contends that this determination is against the great weight and preponderance of the evidence and is not supported by legally sufficient evidence. The appeals file contains no response from the claimant.

DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, he broke his finger when his left hand got caught in a forklift load, and that his arm and shoulder were jerked as he extricated his hand.

The claimant had the burden to prove by a preponderance of the evidence that he sustained an injury to his neck, left shoulder, and left wrist, in addition to his left middle finger, on the date of injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Extent of injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 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 great weight and preponderance of the evidence as to be clearly wrong and unjust and we do not find it to be so in this case. 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 also argues that expert medical testimony, which was not offered at the hearing, is required to establish causation concerning an alleged injury. Generally,

corroboration of an injury is not required and an injury may be found based upon a claimant's testimony alone. Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). We have previously stated that lay testimony is sufficient to establish causation where, based upon common knowledge, a fact finder could understand a causal connection between the employment and the injury, but that expert testimony may be required where such common knowledge does not exist. Texas Workers' Compensation Commission Appeal No. 941464, decided January 9, 1995. We do not agree with the carrier that expert medical testimony was needed in order for the hearing officer to understand the causal connection between the \_\_\_\_\_, injury and its effects on the claimant's neck, left shoulder and left wrist. We do not find that the challenged findings relating to causation are contrary to the great weight and preponderance of the evidence. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Michael B. McShane  
Appeals Judge