APPEAL NO. 011421
FILED JULY 31, 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 23, 2001. The hearing officer determined that the respondent's (claimant) compensable injury of _____, extends to his back, including the diagnosed L5-S1 herniated disc. The appellant (carrier) contends on appeal that this determination, as well as the findings of fact upon which it is based, are against the great weight and preponderance of the evidence. The claimant urges affirmance.

DECISION

Affirmed.

The claimant had the burden to prove by a preponderance of the evidence that the injury he sustained on September 8, 2000, extends to his low back. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Conflicting evidence was presented at the hearing regarding the extent of injuries sustained by the claimant on the date of injury. The claimant testified that, although he injured his back on _____, his shoulder was initially the more severe injury and it was not until the shoulder had resolved that he actively sought treatment for his back. The medical evidence reflects that a back contusion was included in the diagnoses made on the date of injury and that subsequent diagnostic testing revealed a herniated disc. Additionally, Dr. S opined in his report dated January 1, 2001, that the mechanism of injury on _____, the pushing while twisting motion, "attributed [sic] to his lumbar injury."

Extent of injury is a question of fact. 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). 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). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We are satisfied that the disputed findings relating to the extent-of-injury issue are sufficiently supported by the evidence.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge