

APPEAL NO. 011756
FILED SEPTEMBER 18, 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 commenced on May 8, 2001, and was continued until July 3, 2001. With regard to the sole issue before him, the hearing officer determined that the respondent (claimant herein) sustained a compensable injury on _____. The appellant (carrier herein) files a request for review arguing that the hearing officer's finding of injury was not sufficiently supported by the evidence, and that the hearing officer erred in continuing the CCH from May 8, 2001, until July 3, 2001. There is no response from the claimant to the carrier's request for review in the appeal file.

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 claimant testified that she worked for the employer as an internal auditor and that her duties required her to travel to different sites to conduct audits. The claimant stated that when traveling she would have to handle her computer, files, and papers along with her luggage, and that approximately 50% of her work was data entry, often performed in positions that were not ergonomic. The claimant developed pain in her neck, shoulders, and arms, for which she sought medical attention. The claimant's doctor diagnosed cervical radiculitis, thoracic outlet syndrome, SI instability, and carpal tunnel syndrome. The claimant's doctor related the claimant's problems to her work.

The case was initially called for hearing on May 8, 2001. The claimant had requested a continuance because she desired representation by an attorney rather than assistance by an ombudsman. The hearing officer granted the motion for continuance, and the carrier placed into evidence a copy of the form entitled Notification of Scheduling Benefit Contested Case Hearing (Form H&R-10), which states, among other things, that the fact a claimant is still seeking an attorney will not be considered good cause for the granting of a continuance.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 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 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). In the present case, the hearing officer's finding of injury was supported by the testimony of the claimant, as well as documentary evidence from her medical providers. Applying our standard of review, we find this evidence was legally sufficient to support the decision of the hearing officer.

As far as the motion for continuance is concerned, we review this type of decision under an abuse-of-discretion standard. Under the circumstances of this case, we cannot say that the hearing officer abused his discretion, or that the carrier proved any harm due to the granting of the motion for continuance.

The true corporate name of the insurance carrier is **BANKERS STANDARD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS CHARLES MERRITT
6600 CAMPUS CIRCLE DR. EAST, SUITE 200
IRVING, TEXAS 75063.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge