APPEAL NO. 012004
FILED OCTOBER 4, 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 July 25, 2001. The hearing officer determined that the appellant's (claimant) compensable (left elbow) injury included the lumbar spine but did not include or extend to a hernia, or injury to the cervical spine, left shoulder, and left wrist. The hearing officer also determined that the claimant did not have disability from March 9, 2001, and continuing to the CCH.

The claimant appeals "each and every finding of fact and conclusion of law" adverse to the claimant. The claimant also appeals that he did not give timely notice of the injury pursuant to Section 409.001; however, there was no issue regarding timely notice and the hearing officer made no findings on such an issue. Consequently, we regard the appeal of such an issue as surplusage and disregard it. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant had been employed as a truck driver and on the morning of _____, as he was checking the engine of his truck, he slipped on a wet surface and fell into the truck engine compartment. The carrier has accepted, and the parties stipulated, that the claimant sustained a compensable left elbow injury.

The claimant was seen in a hospital emergency room the next day with a history of left elbow pain and that he "re-injured hernias . . . ." (The claimant had had prior hernia surgery in 1994 or 1995.) Subsequent testing by sonogram and evaluation ruled out a hernia although the claimant's current treating doctor continues to list an impression of "inguinal hernia **not currently compensable**." (Emphasis in the original.) The claimant began treating with Dr. D, a chiropractor, on July 1, 2000. Dr. D listed the hernia injury, treated the claimant for his left elbow injury and a lumbosacral strain/sprain, and took the claimant off work. After Dr. D certified the claimant at maximum medical improvement on December 11, 2000, with a zero percent impairment rating, the claimant changed treating doctors to Dr. N, who diagnosed some of the other claimed injuries. The carrier has apparently paid temporary income benefits through March 8, 2001.

There was conflicting medical evidence submitted on the disputed issues. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION** for Commercial Compensation Insurance Company, an impaired carrier, and the name and address of its registered agent for service of process is

MARVIN KELLEY, EXECUTIVE DIRECTOR
TEXAS PROPERTY AND CASUALTY
INSURANCE GUARANTY ASSOCIATION
9120 BURNET RD.
AUSTIN, TEXAS 78758.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge