

APPEAL NO. 012490
FILED NOVEMBER 29, 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 August 28, 2001. He determined that the _____, compensable injury does not extend to and include the appellant's (claimant herein) right inguinal hernia and herniated nucleus pulposus at C3-4, C4-5, and C5-6. On appeal, the claimant expresses disagreement with this decision. The respondent (self-insured herein) urges affirmance.

DECISION

Affirmed.

At issue in this case is whether the hearing officer erred in determining that the compensable injury sustained by the claimant on _____, does not extend to a right inguinal hernia and herniated nucleus pulposus at C3-4, C4-5, and C5-6. Conflicting evidence was presented at the hearing regarding the extent of injuries sustained by the claimant. 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). 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). We are satisfied that the evidence in this case sufficiently supports the hearing officer's resolution of the extent-of-injury issue.

The decision and the order of the hearing officer are affirmed.

The self-insured represents that the true corporate name of the insurance carrier is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
ADDRESS
(CITY), TEXAS (ZIP CODE).**

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge