

APPEAL NO. 012515  
FILED NOVEMBER 28, 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 September 21, 2001. He determined that the \_\_\_\_\_, compensable injury includes the respondent's (claimant herein) right shoulder rotator cuff tear. The appellant (carrier herein) files a request for review contending that the decision of the hearing officer is contrary to the evidence. The claimant responds, urging 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 extend to a right shoulder rotator cuff tear. Conflicting evidence was presented at the hearing regarding the extent of the injuries sustained by the claimant. There was evidence that subsequent to the claimant's compensable injury at work the claimant was injured in a fall at home. 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 determination that the compensable injury sustained by the claimant does extend to a right shoulder rotator cuff tear. The hearing officer obviously understood the correct legal standard when he noted in his discussion that there was evidence that the compensable injury "remained a producing cause of the right shoulder condition after the fall [at home]."

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

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

**JOSEPH KELLY-GRAY, PRESIDENT  
6907 CAPITOL OF TEXAS HIGHWAY NORTH  
AUSTIN, TEXAS 78755.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge