

APPEAL NO. 020280  
FILED MARCH 7, 2002

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 January 15, 2002. With regard to the disputed issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on or about \_\_\_\_\_, and that the claimant had disability from March 17, 2001, through May 20, 2001. The appellant (carrier) appeals, arguing essentially that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be manifestly unjust. The claimant did not respond to the appeal.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on \_\_\_\_\_. Section 401.011(10) provides that a compensable injury is an injury that arises out of and in the course and scope of employment for which compensation is payable under the 1989 Act. Although the hearing officer was not persuaded by the claimant's testimony concerning the mechanism of injury, the other evidence in the case established that the claimant's injury occurred while he was playing soccer with other workers; that the claimant was on the premises of the employer when the injury occurred; that the claimant was on an authorized break at the time of the injury; that the claimant would have returned to work after the break; and that no evidence showed that playing soccer on break violated any employer policy or was forbidden or discouraged. The hearing officer cited our decision in Texas Workers' Compensation Commission Appeal No. 94079, decided February 28, 1994, as authority for his conclusion that the claimant was in the course and scope of his employment at the time of his injury. We agree that he has correctly applied the law to the facts that he found.

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 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, and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer's determination as to disability is likewise supported by the evidence in the record.

We affirm the decision and order of the hearing officer.

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

**HAROLD FISHER, PRESIDENT  
4320 EXECUTIVE CENTER DRIVE  
SUITE 200  
AUSTIN, TEXAS 78731.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge