

APPEAL NO. 020650
FILED APRIL 16, 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 (CCH) was held on January 23, 2002. The hearing officer resolved the disputed issues by concluding that the respondent (claimant) sustained a compensable injury on _____; that the compensable injury extends to include internal derangement of the right knee, torn or displaced anterior cruciate ligament, and lateral meniscus tear; that the claimant had disability from _____, through the date of the CCH; that the appellant (carrier) is not relieved from liability because of the claimant's failure to timely notify the employer of injury; and that the carrier did not waive the right to dispute compensability of the claimed injury. The carrier appealed, arguing that the claimant failed to meet his burden of proof as a matter of law. The claimant responded, contending that the decision and order of the hearing officer was supported by ample evidence. The finding that the carrier did not waive its right to dispute compensability of the claimed injury was not appealed.

DECISION

Affirmed.

There was conflicting evidence presented on the factual questions of whether the claimant had a compensable injury, the extent of injury, what the date of injury was, whether the claimant timely reported an injury to his employer, and whether there was disability. The carrier asserts that the evidence shows that it was physically impossible for the claimant to have been injured as he testified and that its doctor supports the position that there was no injury.

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). An appeals-level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its 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 great weight and preponderance 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). Applying this standard, we find no grounds to reverse the factual findings of the hearing officer.

The decision and order of the hearing officer are affirmed.

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

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Judge