APPEAL NO. 022136
FILED SEPTEMBER 26, 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 July 18, 2002. The hearing officer determined that the appellant's (claimant) compensable cervical and thoracic spine injury of _____, does not extend to and include the claimant's right shoulder.

The claimant appeals, emphasizing that the early medical records document shoulder complaints. In addition to medical records in evidence at the CCH, the claimant submits a series of Dispute Resolution Information System (DRIS) notes for the first time on appeal. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Regarding the DRIS notes, the Appeals Panel generally will not consider documentary evidence submitted for the first time on appeal when that evidence was available at the time of the CCH but not introduced into evidence for consideration by the hearing officer. Section 410.203(a)(1). Texas Workers' Compensation Commission Appeal No. 011806, decided September 11, 2001.

On the merits there was conflicting evidence, both as to the opinions rendered by the various doctors and as to the history given by the claimant. Whether a compensable injury extends to include another condition is a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 020204, decided March 13, 2002.

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 and to decide what facts that evidence established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (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 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appellate 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 to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Susan M. Kelley
Appeals Judge