

APPEAL NO. 022340  
FILED OCTOBER 17, 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 August 21, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and that the claimant did not have disability.

The claimant appeals, emphasizing his testimony and that there was no direct evidence that the claimed incident had not occurred as he described it. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant, a pick up and delivery driver, testified how he injured his ribs, chest, back, and left shoulder when he slipped while leaning in the window of the company truck on \_\_\_\_\_. Most of the evidence is in dispute. It is undisputed that the claimant had sustained a nonwork-related injury in a fall off a horse in September 2001, had right shoulder surgery for that injury in January 2002, and had returned to work on March 7, 2002. In dispute is whether the claimant's claimed injuries were due to the horse incident or by leaning in the window of the truck, whether the claimant had clocked out at the time of the claimed \_\_\_\_\_, incident, whether the incident had even occurred, and whether the claimant was reaching into the truck for work-related papers or his personal jacket. The hearing officer, in his Statement of the Evidence discusses the mechanics of the claimed injury and what the claimant did and did not tell his doctors. The hearing officer found that the claimant's testimony was "not consistent with other evidence."

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. An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgement 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, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL GUARDIAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge