APPEAL NO. 022772
FILED DECEMBER 12, 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 September 27, 2002. The hearing officer determined that the appellant (claimant herein) did not have disability due to her compensable injury of _____, from January 30 through June 18, 2001. The claimant appeals the decision of the hearing officer contending that the hearing officer's decision was contrary to the evidence and that the hearing officer erred in admitting the respondent's (carrier herein) exhibits because they were not timely exchanged. The claimant also objects to the hearing officer's finding that she was in an automobile accident on July 3, 2000, as it had already been agreed that her injuries in the automobile accident were different from the injuries she suffered in the compensable accident of _____. The carrier replies that the decision of the hearing officer was sufficiently supported by the evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

We shall first deal with the claimant's procedural complaints. The evidence concerning the exchange of documents was confusing at best. The carrier contended that it had timely exchanged the exhibits with the claimant. The claimant contended that the address used by the carrier was her mother's address, but that she had moved months before the exchange. The claimant (who appeared at the hearing telephonically) stated that she did have copies of the exhibits in question in her possession. While the fact that at some point the claimant had been provided with the exhibits does not necessarily mean the carrier had met the requirements of the timely exchange rules, in light of the evidence concerning the exchange before her, we cannot say the hearing officer erred as matter of law in admitting the carrier's exhibits.

As far as the finding of the automobile accident, we are at loss as to the relevance of the finding to the issue of disability before the hearing officer. However, the claimant did testify that she had an automobile accident on July 3, 2000, and the hearing officer does not indicate in her decision that she considered the automobile accident to have any impact on the issue of disability. Under these circumstances, we consider the finding surplusage, but do not find that it constituted reversible error.

Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 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 (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 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); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 477 (Tex. Civ. App.-Amarillo 1973, no writ). The claimant had the burden to prove she had disability. We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar, *et al*. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Veronica Lopez
Appeals Judge

_____
Robert W. Potts
Appeals Judge