

APPEAL NO. 022858
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 was held on October 14, 2002. With respect to the sole issue before him, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not include the lumbar and thoracic spine. In his appeal, the claimant argues that the evidence was not sufficient to support the hearing officer's determination against him. The respondent (carrier) urged that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable (head, neck, and shoulder) injury on _____. The claimant argued that his lumbar and thoracic injuries were not diagnosed until September of 1999, because of the severity of his head and neck injuries upon his arrival at the emergency room on the date of injury. The claimant testified that emergency room personnel asked him what hurt the most at that time, and he said the worst pains were in his head and neck. The claimant argues that he also suffered injury, in the form of a contusion, to the thoracic and lumbar spine regions and that his treating doctor supports his allegation. The carrier argued that the claimant had failed to present sufficient evidence to show a nexus between the alleged spinal injuries and the compensable injury of _____. The carrier presented evidence that the claimant had degenerative disc disease and that the problems, if any, the claimant was having with his thoracic and lumbar spine were not diagnosed until September of 1999. The hearing officer decided that the medical evidence supported the carrier's arguments and also supported his finding that the thoracic and lumbar injury, if any, was not a result naturally flowing from the compensable 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 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). 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). We do not find so here.

The decision and order of the hearing officer are affirmed.

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

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Veronica Lopez
Appeals Judge