

APPEAL NO. 022974
FILED JANUARY 6, 2003

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 21, 2002. With respect to the sole issue before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to and include the claimant's cervical degenerative disc disease and/or radiculopathy, but does extend to and include the claimant's torn left rotator cuff. The claimant appealed the determination regarding her alleged cervical injuries, and the respondent (self-insured) responded, urging that the hearing officer be affirmed, as the claimant failed to show a causal connection between her alleged cervical injury and her compensable injury. Neither party appealed the hearing officer's determination that the claimant's torn left rotator cuff was included in her compensable injury; therefore, that determination has become final pursuant to Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not extend to and include the claimant's cervical degenerative disc disease and/or radiculopathy. It is undisputed that the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome and neck strain as the result of the repetitive activities associated with her job duties. The claimant now contends that she also aggravated her cervical degenerative disc disease and radiculopathy stemming from "bulging" discs in her cervical region. The self-insured notes that the claimant sustained neck injuries in at least two incidents prior to the date of injury, including a workers' compensation claim in 1997, and a motor vehicle accident in 1999. The self-insured also points out that even the claimant's treating doctor did not believe that a neck injury like the claimant's would result from repetitive trauma. The hearing officer decided that the claimant failed to meet her burden of proof "to demonstrate a cause and effect relationship between the injury made the basis of this case and any cervical injury, including degenerative disc disease and/or cervical radiculopathy."

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 name of the self-insured governmental entity is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**CT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Terri Kay Oliver
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge