APPEAL NO. 030069
FILED MARCH 3, 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 December 3, 2002. The hearing officer determined that the respondent's (claimant) spondylolisthesis is not a result of his _____, compensable injury; that the claimant's spondylolisthesis is not compensable; and that the claimant reached maximum medical improvement (MMI) on December 31, 2001, with a 0% impairment rating (IR) as certified by the Texas Workers' Compensation Commission-selected designated doctor. The claimant appealed on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The disputed issues in this case presented questions of fact for the hearing officer to resolve. The claimant offered evidence to support his position regarding the extent of his compensable injury, that he has not yet reached MMI, and that it is therefore premature to issue an IR. The carrier offered evidence to the contrary. The claimant had the burden of proof on the disputed issues. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The finder of fact may believe that the claimant has an injury, but disbelieve the claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by the testimony (or evidence) of a medical witness where the credibility of that testimony (or evidence) is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084, *supra*. Under our standard of review, we conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not 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). 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.).

We note that on appeal, the claimant asserts that it was unfair that the carrier was represented by an "insurance lawyer." Our review of the record indicates that the claimant was adequately apprised of his right to be represented by an attorney, and he chose to proceed without one. As such, any argument or point of error the claimant may have had in this regard has been waived.

The hearing officer's decision and order are affirmed.

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

BRUCE ROBERT MILLIGAN
2727 TURTLE CREEK BLVD.
DALLAS, TEXAS 75266-0560.

_____
Daniel R. Barry
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Robert W. Potts
Appeals Judge