APPEAL NO. 030115
FILED MARCH 5, 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 (CCH) was held on December 16, 2002. The hearing officer determined that the respondent (carrier herein) did not waive its right to contest the compensability of the appellant's (claimant herein) injury; that the claimant sustained a compensable injury on _____; and that the claimant had disability from February 25 to April 30, 2002, but not from May 1, 2002, through the date of the CCH. The claimant files a request for review in which he appeals the hearing officer's resolution of the disability issue and contends that the evidence established he had disability from May 1, 2002, through the date of the CCH. The carrier responds that the hearing officer's finding of no disability from May 1, 2002, through the date of the CCH was supported by sufficient evidence. The claimant also files a "Request for Consideration of New Evidence and Remand" in which the claimant alleges that an MRI performed on January 21, 2003, constitutes newly discovered evidence and that the Appeals Panel should remand the case to the hearing officer to consider this evidence. The carrier responds that the claimant's request should be denied. Although the carrier alludes to a carrier request for review in both its responses, there is no request from the carrier in the appeal file.

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 cannot consider the claimant's "Request for Consideration of Evidence and Remand." The claimant states in his request for review that he received the decision of the hearing officer on December 30, 2002. Thus, the claimant had until January 22, 2003, to file a request for review. *See* Section 410.202(a); Section 410.202(d). The claimant's initial request for review was sent to the Texas Workers' Compensation Commission (Commission) by facsimile transmission on January 14, 2003, and is clearly timely. However, the claimant's "Request for Consideration of New Evidence and Remand" was first sent to the Commission on January 28, 2003, by facsimile transmission and is not timely to act as a request for review. We therefore cannot consider this document. *See* Texas Workers' Compensation Commission Appeal No. 92003, decided February 12, 1992.

We note that the only issue before us on appeal is whether the hearing officer erred in finding that the claimant did not have disability from May 1, 2002, through the date of the CCH. Disability is a question of fact. Section 410.165(a) provides that the contested case 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, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. 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).

There was conflicting evidence in the present case concerning disability. Dr. A, the surgeon who operated on the claimant, released the claimant to full duty on May 1, 2002. While there was other medical evidence indicating the claimant could not work after May 1, 2002, it was the province of the hearing officer to resolve the conflicts in the evidence. Applying the above standard, we cannot say that the decision of the hearing officer was legally incorrect.

The decision and order of the hearing officer are affirmed.

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

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

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge