

APPEAL NO. 030167
FILED MARCH 12, 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 November 20, 2002. The hearing officer determined that the appellant's (claimant herein) compensable injury of _____, includes an injury of low back sprain/strain and right hip sprain/strain; that the claimant did not sustain a compensable injury on (alleged date of injury); that the claimant did not have disability as result of an injury on (alleged date of injury); and that there was no injury on (alleged date of injury), that could be the sole cause of the claimant's low back sprain/strain and right hip sprain/strain injuries. The claimant appeals, contending that his injury of _____, extended beyond a sprain/strain. The claimant also contended that he did suffer an injury on (alleged date of injury), which resulted in disability. There is no response in the appeal file from either respondent (carrier 1) or from (carrier 2).

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 first address the claimant's appeal of the hearing officer's extent-of-injury determination. The extent issue before the hearing officer at the CCH was whether the claimant's _____, injury included a low back sprain/strain and right hip sprain/strain. The hearing officer found that the claimant's injury did include both of these. These findings do not preclude the claimant from pursuing further action to establish that his back and/or hip injury extends beyond a strain/sprain. The hearing officer resolved the extent-of-injury issue before her. It was not error for her not to go beyond the issue, but her resolution of this issue does not mean that the claimant's injury is necessarily restricted to just a strain/sprain.

As far as the hearing officer's determination that the claimant did not suffer an injury on (alleged date of injury), we note that the question of whether or not an injury occurred 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). As there was conflicting evidence on the issue of whether or not the claimant suffered an injury on (alleged date of injury), applying the above standard, we find no legal error in the hearing officer's finding of no injury on that date.

Finally, with no compensable injury found on (alleged date of injury), there is no loss upon which to find disability from such an injury. By definition disability depends upon a compensable injury. See Section 401.011(16).

The decision and order of the hearing officer are affirmed.

The true corporate name of insurance carrier 1 is **REPUBLIC LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**WILLIAM PITT
2727 TURTLE CREEK BLVD.
DALLAS, TEXAS 75219.**

The true corporate name of the insurance carrier 2 is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Edward Vilano
Appeals Judge