APPEAL NO. 030178
FILED FEBRUARY 24, 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 19, 2002. The hearing officer determined that the appellant's (claimant herein) compensable injury does not include the current condition to the claimant's neck, back, right shoulder, depression, anxiety, and bilateral carpal tunnel syndrome (CTS). The claimant appeals, contending that the hearing officer's decision was based on intervening injuries, but that her compensable injury still contributes to her present condition. The respondent (carrier herein) replies that the decision of the hearing officer should be affirmed.

DECISION

We strike a finding of the hearing officer and affirm the decision of the hearing officer as to the matters within his authority.

The parties stipulated that the claimant sustained a compensable injury on _____. The carrier brought forth evidence that since the compensable injury the claimant had been involved in several motor vehicle accidents. The claimant presented evidence from her treating doctor relating her present condition to her compensable injury.

Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. 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). Applying this standard, we find some evidence to support the hearing officer's determination that the

claimant's injury does not extend to include the current condition of her neck, back, right shoulder, depression, anxiety, and bilateral CTS. This is so even though another fact finders might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

However, the decision of the hearing officer in a number of ways exceeds the issue before him. For instance in Finding of Fact No. 2 the hearing officer finds as follows:

> 2. Claimant does not continue to suffer damage or harm to her person as a result of her work injury of _____.

This finding goes beyond the issue of whether the claimant's injury extends to her current condition and would appear to find that the claimant's injury is no longer compensable. Such a finding exceeds the issue before the hearing officer and in fact exceeds his authority. The parties stipulated that the claimant had a compensable injury. The hearing officer does not have the authority to relitigate the issue of compensability. We therefore strike Finding of Fact No. 2 as exceeding the authority of the hearing officer.

The claimant also raises a significant point regarding sole cause. If the carrier is seeking to defeat a claim for benefits based upon intervening injuries, then it bears the burden of proving that the intervening cause is the sole cause of the claimant's current condition. *See* Texas Workers' Compensation Commission Appeal No. 94844, decided August 15, 1994; Texas Workers' Compensation Commission Appeal No. 952061, decided January 22, 1996; Texas Workers' Compensation Commission Appeal No. 990401, decided April 14, 1999; and Texas Workers' Compensation Commission Appeal No. 992587, decided December 30, 1999. In the present case, the hearing officer indicates in his decision that he did not find the claimant or her medical evidence credible to establish that her compensable injury was a producing cause of her current neck, back, right shoulder, depression, anxiety, and bilateral CTS. This is within his province as the finder of fact.

However, we want to make it clear that the hearing officer, by determining that the claimant's injury does not extend to her current neck, back, right shoulder, depression, anxiety, and bilateral CTS conditions, does not have the authority to cut off the claimant's lifetime medical benefits for her compensable injury. The following statement from our decision in Texas Workers' Compensation Commission Appeal No. 011447, decided August 10, 2001, is equally applicable to the present case:

> We caution however that the decision of the hearing officer not be overread. We have repeatedly held that a claimant may go in and out of disability and that a hearing officer does not have the authority to determine the issue of disability beyond the date of the CCH. Texas Workers' Compensation Commission Appeal No. 931049, decided December 31, 1993. Similarly, a claimant's need for medical care for a

compensable injury may ebb and flow. Pursuant to Section 408.021(a) an injured employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. There is no authority under the 1989 Act for a hearing officer to end a claimant's right to future medical benefits for treatment of the compensable injury during the lifetime of the claimant. Issues and findings dealing with the extent of an injury and with disability far more clearly delineate the issues within the purview of a hearing officer's than issues framed in terms of whether or not the claimant continues to suffer from the "effects" of an injury. Efforts by benefit review officers and hearing officers to keep the issues within the channels of the hearing officers' authority are more likely to facilitate the orderly resolution of benefit disputes.

Accordingly the decision and order of the hearing officer are affirmed as to matters within his authority.

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

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Terri Kay Oliver
Appeals Judge