

APPEAL NO. 030488
FILED MARCH 31, 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 January 29, 2003. The hearing officer determined that the respondent/cross-appellant's (claimant herein) compensable injury of _____, extended to and included a ganglion cyst on his right wrist; that the claimant reached maximum medical improvement (MMI) on April 15, 2002, with a zero percent impairment rating (IR); and that the claimant did not have disability from April 16 through August 15, 2002. The appellant/cross-respondent (carrier herein) files a request for review, arguing that the hearing officer's determination that the claimant's injury extended to and included a ganglion cyst on his right wrist is contrary to the evidence. The claimant responds that the hearing officer did not err in this determination. The claimant appeals the hearing officer's determinations concerning IR, MMI, and disability. The carrier responds that the hearing officer did not err in basing his resolution of the MMI and IR issues on the report of a designated doctor selected by the Texas Workers' Compensation Commission (Commission) and that there was sufficient evidence to support the hearing officer's disability determination.

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 have held that the question of the extent of an injury is a question of fact for the hearing officer. 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).

In the present case, there was simply conflicting evidence concerning the extent of the claimant's injury, and it was the province of the hearing officer to resolve these conflicts. Applying the above standard of review, we find that the hearing officer's determination that the claimant's compensable injury extended to ganglion cyst on his right wrist was sufficiently supported by the evidence in the record.

Sections 408.122(c) and 408.125(c) of the 1989 Act provide that a report of a Commission-appointed designated doctor shall have presumptive weight on the issues of MMI and IR and the Commission shall base its determination on such report unless the great weight of other medical evidence is to the contrary. The Appeals Panel has stated that the great weight of the other medical evidence requires more than a mere balancing or preponderance of the evidence; that no other doctor's report, including a treating doctor's report, is accorded the special presumptive status; that the designated doctor's report should not be rejected absent a substantial basis for doing so; and that medical evidence, not lay testimony, is required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 960817, decided June 6, 1996; Texas Workers' Compensation Commission Appeal No. 94835, decided August 12, 1994.

The hearing officer determined that the other medical evidence did not constitute "the great weight of other medical evidence" contrary to the designated doctor's certification on MMI and IR. Upon review of the record in this matter, we cannot say that the hearing officer erred in this determination. As such, the hearing officer did not err in giving presumptive weight to the designated doctor's report in accordance with Sections 408.122(c) and 408.125(c).

Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Applying our standard of review for factual determinations, set out above, we perceive no error regarding the hearing officer's resolution of the disability issue.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL 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

Thomas A. Knapp
Appeals Judge