APPEAL NO. 030598
FILED APRIL 30, 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 February 12, 2003. The hearing officer decided that the appellant/cross-respondent (claimant herein) sustained a compensable injury to his left knee, but not to his low back on _____; that the respondent/cross-appellant (carrier herein) is not relieved of liability under Section 409.002 because the claimant timely reported an injury to his employer pursuant to Section 409.001; and that the claimant did not have disability. The Director of Hearings of the Texas Workers' Compensation Commission entered an Order on Motion to Correct Clerical Error to a typographical error in the hearing officer's findings of fact. The claimant appeals, contending the evidence established that his injury included an injury to his low back and that he did have disability. The carrier responds that the hearing officer's determinations that the claimant did not sustain an injury to his low back and did not have disability are supported by the evidence. The carrier appeals the hearing officer's determinations that the claimant sustained a compensable injury to his left knee and that the claimant timely reported a work-related injury to his employer as being contrary to the evidence. There is no response from the claimant to the carrier's request for review 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.

There was conflicting evidence presented on the disputed issues of injury and disability. The issues of injury and disability are questions of fact. Section 410.165(a) provides that the 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 no basis to reverse the hearing officer's resolution of the injury or disability issues.

The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). To be effective, notice of injury needs to inform the employer of the general nature of the injury and the fact it is job related (emphasis added). DeAnda v. Home Ins. Co., 618 S.W.2d 529, 533 (Tex. 1980). In the present case, the hearing officer found as a matter of fact that the claimant did timely report a work-related injury to his employer. While there is conflicting evidence on this issue, it was the province of the hearing officer to resolve those conflicts. Under the standard of review set out above, we find no basis to reverse the hearing officer's factual finding that the injury was timely reported.

The decision and order of the hearing officer, as corrected by the Order on Motion to Correct Clerical Error, is affirmed.

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

FRED WERKENTHIN
JACKSON WALKER, L.L.P.
100 CONGRESS AVENUE, SUITE 1100
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Chris Cowan
Appeals Judge