

APPEAL NO. 030639
FILED APRIL 17, 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 27, 2003. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) compensable injury of _____, does not extend to include the lumbar spine. The claimant appealed the hearing officer's determination based on sufficiency of the evidence, and asserted that the hearing officer erred in overruling the claimant's objections to the respondent's (carrier) line of questioning directed at the treating doctor and allowing the carrier to examine the treating doctor's medical file. The carrier responded, urging affirmance.

DECISION

Affirmed.

The question of the 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 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 (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 (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 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find sufficient evidence to support the factual finding of the hearing officer that the claimant's injury did not extend to his lumbar spine.

The claimant asserts that the hearing officer erred in his evidentiary rulings. Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; see *also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San

Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). Given the bases that the hearing officer provided for her rulings, we do not find her evidentiary rulings to be an abuse of discretion, as she acted with reference to guiding rules and principles. We would further note that conformity to the legal rules of evidence is not required. Section 410.165(a) of the 1989 Act specifically provides that "[c]onformity to legal rules of evidence is not necessary." Nor did the claimant establish that the evidentiary error he asserts probably caused the rendition of an improper judgment.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **UTICA NATIONAL INSURANCE COMPANY OF TEXAS** and the name and address of its registered agent for service of process is

**RICHARD A. MAYER
11910 GREENVILLE AVENUE, SUITE 600
DALLAS, TEXAS 75243-9332.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Roy L. Warren
Appeals Judge