

APPEAL NO. 030914
FILED MAY 22, 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 March 14, 2003. The hearing officer resolved the disputed issues by deciding that respondent 1 (claimant) sustained a new compensable aggravation injury to his right knee on _____; that his right knee injury of August 28, 1999, does not include the aggravation injury to the right knee sustained on _____; and that he had disability as a result of his right knee injury of _____, beginning _____, and continuing through the date of the hearing. The appellant (carrier 1) appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence. Both respondent 2 (carrier 2) and the claimant responded, urging affirmance.

DECISION

Affirmed.

Injury, extent of injury, and disability are questions of fact for the hearing officer to resolve. 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 no grounds to reverse the factual findings of the hearing officer.

In addition, the carrier contends that the hearing officer did not consider the testimony of the carrier's witness. The statement of the evidence contains a brief statement that even though all of the evidence presented was not discussed, it was considered. The Appeals Panel stated that the 1989 Act does not require that the

Decision and Order of the hearing officer include a statement of the evidence and that omitting some of the evidence from a statement of the evidence did not result in error. Texas Workers' Compensation Commission Appeal No. 000138, decided March 8, 2000, citing Texas Workers' Compensation Commission Appeal No. 94121, decided March 11, 1994. Accordingly, we believe that the hearing officer considered the carrier's evidence and simply decided to accept the evidence from the claimant over the contrary evidence presented by the carrier.

The hearing officer's decision and order are affirmed.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

The true corporate name of insurance carrier 2 is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Veronica Lopez
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge