APPEAL NO. 030948
FILED JUNE 10, 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 13, 2003. The hearing officer decided that the appellant (claimant herein) did not sustain a compensable injury in the form of an occupational disease; that the date of the claimed injury was _____; that the respondent (carrier herein) was not relieved of liability under Section 409.002 because the claimant timely reported an injury; that the carrier timely contested compensability in sufficient language concerning the issue of timely reporting; and that the claimant did not have disability. The claimant appeals the hearing officer's determinations that he did not sustain a compensable injury in the form of an occupational disease and that he did not have disability as being contrary to the evidence. The carrier responds that the claimant's appeal might be untimely and that the evidence supports the decision of the hearing officer.

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.

The suggestion by the carrier that the claimant's appeal might be untimely is based upon the supposition that the claimant may have received the hearing officer's decision earlier than the claimant's attorney, who states in the appeal that she received the decision on March 31, 2003. The records of the Texas Workers' Compensation Commission (Commission) show that the Commission transmitted the hearing officer's decision to the parties on March 27, 2003. There is no evidence in the record as to when the claimant received the hearing officer's decision. Absent the great weight of the evidence to the contrary, the claimant was deemed by operation of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), to have received the hearing officer's decision five days after it was mailed, or in this case, on April 1, 2003. Thus, receipt by the claimant is deemed later than March 31, 2003, which is inconsistent with the carrier's conjecture that the claimant might have received the hearing officer's decision prior to March 31, 2002. It being undisputed that the request for review, which was transmitted to and received by the Commission on April 22, 2003, was timely if the hearing officer's decision was received on or after March 31, 2002, the claimant's appeal is timely and we have jurisdiction to consider it.

The question of whether an injury occurred is a question of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 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 to 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). There was conflicting evidence concerning injury in the present case. Applying the standard above, we find no legal error in the hearing officer's finding that the claimant did not sustain a compensable injury in the present case.

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition disability depends upon a compensable injury. *See* Section 401.011(16).

The decision and order of the hearing officer are affirmed.

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

CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Margaret L. Turner
Appeals Judge

_____
Edward Vilano
Appeals Judge