

APPEAL NO. 031191
FILED JUNE 26, 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 April 17, 2003. The hearing officer determined that the appellant's (claimant) _____, (unspecified) compensable injury does not include the diagnosis of fibromyalgia or injury to her lumbar area. The claimant appealed, asserting that the respondent (self-insured) waived the right to contest the compensability of fibromyalgia; that the hearing officer erred in raising the issue of preexisting condition; that the hearing officer failed to consider all of her evidence; and generally takes issue with the manner in which the hearing officer gave weight to the evidence. The file does not contain a response from the self-insured.

DECISION

Affirmed.

The issue in the case before us was one of extent of injury. The claimant asserts that the self-insured waived the right to contest the compensability of her claimed fibromyalgia diagnosis pursuant to Section 409.021 by failing to do so within 60 days of _____. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)) provides that Section 409.021 does not apply to disputes of extent of injury. Therefore, we cannot agree with the claimant's assertion that the self-insured waived the right to dispute whether or not the claimant's original compensable injury extends to include fibromyalgia.

The claimant asserts that the hearing officer did not consider all of her evidence, takes issue with the way he interpreted the medical evidence, and alleges that the hearing officer erred in considering whether or not her complained-of conditions preexisted her compensable injury. Upon review of the record, we find that the hearing officer made his findings of fact and conclusions of law based upon the evidence the parties offered into the record at the hearing. The claimant asserts that she submitted 645 pages of evidence as opposed to the 46 pages submitted by the self-insured. Our review of the record from the hearing and the appeal file reveals that the claimant submitted 76 pages of evidence into the record, not 645 pages. Additionally, conflicting evidence was offered at the hearing regarding when the claimant first began to suffer from her current complained-of conditions. It was incumbent on the hearing officer to determine when and how the claimant developed her conditions in order to make a determination regarding their compensability. We perceive no error on the part of the hearing officer.

The claimant had the burden to prove that the unspecified compensable injury extends to fibromyalgia and an injury to her lumbar area. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and

credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Worker's Compensation Commission Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's extent of injury determinations are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**MB
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge