APPEAL NO. 031756
FILED AUGUST 27, 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 June 12, 2003. The hearing officer decided that the respondent's (claimant herein) _____, compensable injury extends to an injury to the right shoulder. The appellant (self-insured herein) argues that the decision of the hearing officer is incorrect and should be reversed. The claimant responds and argues that the decision of the hearing officer should be affirmed.

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.

It was undisputed that the claimant injured his left shoulder on _____. The claimant testified that this injury took place when, working as a peace officer, he was apprehending a suspect. The hearing officer found that during the course of physical therapy prescribed for the rehabilitation of the left shoulder, the claimant suffered a right shoulder injury in late September or early October 2002. The hearing officer also found that the claimant's right shoulder injury is a result naturally flowing from the treatment for the left shoulder injury that occurred on _____, at work. The hearing officer concluded that the right shoulder has become part of the compensable injury and that the self-insured is liable for benefits related to such body part.

The self-insured contends that the hearing officer erred in finding that the claimant's right shoulder was injured during the course of physical therapy. The self-insured contends that this theory is only supported by the claimant's testimony and that the medical evidence shows that the claimant's right shoulder was injured due to "overuse" of his right shoulder due to the injury of his left shoulder. The self-insured asserts that an injury due to overuse of a body part due to an injury to another body part is not compensable. The claimant responds that there is sufficient evidence to support the decision of the hearing officer that the claimant's right shoulder injury occurred during physical therapy for his left shoulder injury and that the right shoulder injury naturally flows from the treatment of his left shoulder injury.

The hearing officer did not err in determining that the claimant's compensable injury of _____, includes an injury to the right shoulder. As stated in Maryland Casualty Co. v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e. *per curiam*, 432 S.W.2d 515):

> The law is well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that

> specific injury if such injury, or proper or necessary treatment therefore, causes other injuries which render the employee incapable of work.

The issue of whether the subsequent injury was caused by the compensable injury, or the proper and necessary treatment of it, is generally one of fact. *See* Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993; Texas Workers' Compensation Commission Appeal No. 93855, decided November 8, 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). Applying this standard, we find no error in the hearing officer's factual findings. Applying Sosa, *supra*, to the hearing officer's factual finding, we find no legal error in the hearing officer's concluding that the claimant's compensable injury includes an injury to his right shoulder.

The decision and order of the hearing officer are affirmed.

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

COUNTY JUDGE
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Veronica Lopez-Ruperto
Appeals Judge

_____
Robert W. Potts
Appeals Judge