APPEAL NO. 031999
FILED SEPTEMBER 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 (CCH) was held on June 30, 2003. The hearing officer determined that the appellant's (claimant herein) compensable injury does not extend to and include a cervical spine injury. The claimant appeals, contending that the hearing officer's decision is contrary to the evidence. The claimant also argues that the interpreter was inadequate. The respondent (carrier herein) replies that the hearing officer's decision is supported by the evidence.

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.

We first address the issue of the adequacy of the interpreter. The claimant's argument on the inadequacy of the interpreter is based on the fact that the hearing officer on several occasions during the hearing reprimanded the interpreter for not providing word-for-word translation. We note that no objection was made to the adequacy of the interpreter at the CCH and thus no error has been preserved. Further, in light of the fact that the translation was simultaneous, and thus in the background, as well as the fact that the hearing officer's audiotape recording of the hearing was so poor that the audio in the foreground could only be understood with great strain, we have no basis to judge whether or not any of the comments of the hearing officer to the interpreter had any validity.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. 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).

It was the claimant's burden to prove that his injury extended to an injury to the cervical spine. Applying the above standard of review, we cannot say that the hearing officer's decision that the claimant failed to meet this burden was incorrect as a matter of law.

The decision and order of the hearing officer are affirmed.

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

MR. RUSSELL R. OLIVER, PRESIDENT
TEXAS MUTUAL INSURANCE COMPANY
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

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Gary L. Kilgore
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Thomas A. Knapp
Appeals Judge