APPEAL NO. 032306
FILED OCTOBER 13, 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 August 5, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the respondent (carrier) is relieved of liability under Section 409.002 because of the claimant's failure, without good cause, to timely notify his employer of the alleged injury pursuant to Section 409.001; that the carrier did not waive the right to contest compensability of the claimed injury because the carrier timely contested the injury in accordance with Sections 409.021 and 409.022; and that, because the claimant did not sustain a compensable injury, the claimant did not have disability. The claimant appeals, essentially taking issue with the way that the hearing officer evaluated the evidence. The carrier responded, urging affirmance.

DECISION

Affirmed.

Injury and timely notice to the employer are questions of fact for the hearing officer to resolve. 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). In this case, the hearing officer specifically found that the claimant was not injured in the course and scope of his employment on _____, and he did not find the testimony regarding the alleged reporting of the injury on June 11, 2002, to be credible in light of contradictory testimony. 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 hearing officer's resolution of either the injury or the timely notice issue.

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The evidence sufficiently supports the hearing officer's findings concerning when the carrier first received written notice of the alleged injury and when the carrier disputed the injury, and the hearing officer's conclusion that the carrier's dispute was timely filed.

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have disability.

We affirm the decision and order of the hearing officer.

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

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

_____
Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge

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