

APPEAL NO. 032952
FILED DECEMBER 30, 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 October 17, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had disability from May 12 until June 2, 2003. The appellant (self-insured) appealed the hearing officer's injury and disability determinations on sufficiency of the evidence grounds, and asserted that the hearing officer erred in not determining disability after June 2, 2003. The appeal file does not contain a response from the claimant.

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.

There was conflicting evidence presented on the disputed issues of injury and disability. The issues of injury and disability are questions of fact. 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). The claimant testified that he was injured when a tree limb struck him on his chest on _____, and that he was released to light-duty work earning his regular pay on June 3, 2003. The hearing officer noted that she found the claimant's testimony and his medical documentation credible. 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 basis to reverse the hearing officer's resolution of the injury or disability issues.

We also find no error in the hearing officer not making a specific finding regarding disability after June 2, 2003. The issue before the hearing officer was whether the

claimant had disability and if so, for what period. The hearing officer found the claimant had disability and the period of that disability. Thus, the hearing officer resolved the issue before her.

The decision and order of the hearing officer are affirmed.

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

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

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge