

APPEAL NO. 033087
FILED JANUARY 5, 2004

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 30, 2003. The hearing officer determined that the date of injury is on or about _____; that the appellant (claimant) did not sustain a compensable repetitive trauma injury; that the respondent (carrier) is not relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001; that because the claimant did not sustain a compensable injury, he did not have disability; and that because the claimant did not sustain a compensable injury, the claimed injury does not include multifactorial moderate bilateral neural foraminal and spinal canal stenosis at L5-S1 and moderate right neural foraminal stenosis at L4-5 primarily due to facet arthropathy and/or an injury to the left leg. The claimant appealed the hearing officer's date-of-injury, compensability, and disability determinations based on sufficiency of the evidence. The carrier responded, urging affirmance. The hearing officer's notice and extent-of-injury determinations have not been appealed and have become final pursuant to Section 410.169.

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). 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.

The decision and order of the hearing officer are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge