

APPEAL NO. 033286
FILED JANUARY 28, 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 (CCH) was held on December 8, 2003. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, does not extend to include depression, lumbar facet atrophy, and foraminal stenosis at L4-5 and L2 through L5. The appellant (claimant) appealed, disputing the determination. The respondent (carrier) responded, urging affirmance, and contending that the evidence supports the hearing officer's determination and failed to establish that the compensable injury extended to the disputed conditions.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on _____. Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 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. Conflicting evidence was presented at the CCH on the disputed issue. 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 (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 (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 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer found that the claimant had depression, arthritis, spondylosis, and degenerative conditions in his low back which predated the compensable injury. The hearing officer was not persuaded that the disputed conditions were caused or aggravated by the compensable injury of _____. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We note that in his appeal, the claimant contends that he was denied assistance of an ombudsman and an attorney. The record reflects that the claimant was assisted at the CCH by an ombudsman. The claimant did not oppose going forward at the CCH with the assistance of an ombudsman nor did he complain of the assistance he received at the CCH. Further, the ombudsman at the CCH represented that she would explain

the appellate procedures to the claimant after the close of the CCH. We find no merit in the claimant's contention that he was not given a fair hearing.

We affirm the decision and order of the hearing officer.

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

**LEON CROCKETT
1600 NORTH COLLINS BOULEVARD, SUITE 300
RICHARDSON, TEXAS 75080.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge