

APPEAL NO. 040019  
FILED FEBRUARY 19, 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 9, 2003. The hearing officer decided that the appellant/cross-respondent (claimant herein) sustained a compensable injury on \_\_\_\_\_; that the compensable injury included an injury to the claimant's left shoulder, but does not extend to nor include the claimant's cervical spine or thoracic spine; and that the claimant had disability beginning on May 6, 2003, and continuing through May 20, 2003. The claimant appeals the hearing officer's extent-of-injury and disability determinations. The claimant argues that the evidence established that the compensable injury extended to his cervical spine and thoracic spine and that he had disability continuing through the date of the CCH. The respondent/cross-appellant (carrier herein) also files a request for review arguing that the hearing officer's finding that the claimant sustained a compensable injury on \_\_\_\_\_, was contrary to the evidence. Both parties filed responses to the other party's request for review.

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.

The issues of injury, extent 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). 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).

In the present case, there was simply conflicting evidence, and it was the province of the hearing officer to resolve these conflicts. Applying the above standard

of review, we find that the hearing officer's decision was sufficiently supported by the evidence in the record.

The decision and order of the hearing officer are affirmed.

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

**JOSEPH KELLEY-GRAY, PRESIDENT  
6907 CAPITOL OF TEXAS HWY. NORTH  
AUSTIN, TEXAS 78755.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge