

APPEAL NO. 040052
FILED MARCH 10, 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 10, 2003. The hearing officer determined that the appellant/cross-respondent's (claimant herein) injury of _____, includes bruises on the arms, elbow and legs, a bruise and blurred vision of the left eye, and a bruise of the head and headaches, but does not include anxiety, impotence, fatigue, a groin bruise, and loss of appetite. The hearing officer also determined that the claimant had disability beginning on March 4, 2003, and continuing through the date of the CCH. The claimant appeals, contending that the hearing officer erred in not finding that the claimant's injury included "left-sided weakness" because the issue of whether the injury extended to left-sided weakness was actually litigated. The respondent/cross-appellant (self-insured herein) responds that the issue of whether or not the claimant's injury extended to left-sided weakness was not an issue before the hearing officer and was not actually litigated at the CCH. The self-insured appeals portions the hearing officer's extent-of-injury determination and the hearing officer's finding of disability. The claimant responds that the hearing officer's determinations challenged by the self-insured were correctly decided.

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 parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that he suffered an electrical shock when a refrigerated meat case malfunctioned and he tried to turn it off. The claimant testified that he hit his head, neck, and back on a wall after being shocked. The claimant contended that as a result of his injury he had bruises on his arms, legs, and groin area where the electricity entered and exited his body and that he also had left-sided weakness, headaches, blurred vision, anxiety, loss of appetite, and impotence. The carrier contended that the claimant's compensable injury was limited to contusions of the claimant's legs, left arm, and the back of his head.

The claimant argues that the hearing officer erred in not making a factual finding that the claimant's injury includes left-sided weakness, because while not listed as an issue before the hearing officer, the issue of whether or not the injury included left sided weakness was actually litigated. The hearing officer states the following in the section of his decision labeled "Statement of the Evidence":

The question of whether left sided weakness [is] included in this injury was not raised in the extent of injury issue. Additional diagnostic studies requested by RME [required medical examination] [Dr. H] and

recommended by designated doctor [Dr. S] have not been done. These doctors do indicate that based on information to date, that they feel it is part of the injury, and is the primary problem with Claimant returning to work using his hands at this time. Accordingly, it is relevant to the disability issue, and the weight of the evidence at this time indicates that this condition is related to the electrocution injury rather than Claimant's cirrhosis, and accordingly it will control the disposition of the disability issue.

In light of the evidence before him we do not fault the hearing officer for not making a formal factual finding regarding the extent of injury and left-sided weakness in light of the fact that it was not listed as an issue and the claimant had not completed diagnostic testing. On the other hand, in light of the fact that the carrier's defense to the issue was not that the claimant did not have left-sided weakness, but rather that such weakness was not causally related to his electrical shock injury, we find no error in the hearing officer finding disability based upon left-sided weakness based upon the evidence before him at the CCH.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. 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. 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). 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find sufficient evidence to support the hearing officer's resolution of the extent-of-injury issue.

Disability is also a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. There was conflicting evidence concerning disability in this case. Applying the standard

of review discussed above we find no error in the hearing officer's resolution of the disability issue.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

DISSENTING OPINION:

I respectfully dissent from the majority's opinion. Upon review of the record, I believe the issue of extent of injury was actually litigated with regard to the claimant's left-sided weakness. In view of the hearing officer's statement that "the evidence at this time indicates that this condition is related to the electrocution injury rather than Claimant's cirrhosis," I would render a decision that the compensable injury extends to include left-sided weakness and that the claimant had resulting disability from March 4, 2003, through the date of the hearing.

Edward Vilano
Appeals Judge