

APPEAL NO. 040161
FILED MARCH 15, 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 December 12, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had disability from the compensable injury beginning on August 23 and continuing through December 12, 2003. The appellant (carrier) appeals on sufficiency of the evidence grounds and asserts legal errors. The claimant responded, urging affirmance, but the response, despite apparently being timely mailed by the claimant's attorney on February 11, 2004, was not received by the Texas Workers' Compensation Commission's Chief Clerk of Proceedings until March 3, 2004, and cannot be considered. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.4(c) (Rule 143.4(c)).

DECISION

Affirmed.

The carrier asserts that the hearing officer erred in admitting and considering testimony that was inconsistent with or not previously disclosed within the claimant's answers to the carrier's interrogatories. We note that no such objection was made during the hearing, and, in any event, the carrier argued at length concerning the credibility of the claimant, to include arguments about her inconsistent statements as to how she was injured. We perceive no reversible error.

The carrier also asserts that the hearing officer erred in failing to specifically identify the damage or harm which is the basis for his finding that the claimant sustained a compensable injury. The short answer to that assertion is that the issues at the hearing dealt with whether or not the claimant sustained a compensable injury and had disability, and there was no extent-of-injury issue before the hearing officer. It would have been inappropriate, under the circumstances of this case, for the hearing officer to decide an extent-of-injury issue. We perceive no error.

The hearing officer did not err in making the complained-of injury and disability determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The carrier made essentially the same arguments on appeal that it made during the hearing concerning the credibility of the claimant and her evidence. 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). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are 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 affirm the decision and order of the hearing officer.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Edward Vilano
Appeals Judge

CONCUR IN THE RESULT:

Thomas A. Knapp
Appeals Judge