APPEAL NO. 040175
FILED MARCH 3, 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 January 6, 2004. The hearing officer determined that the respondent's (appellant) compensable injury of _____, includes left elbow cubital tunnel syndrome, left ulnar nerve contusion, left ulnar nerve irritation at elbow, and left carpal tunnel syndrome. The appellant (carrier) appealed, arguing that the extent-of-injury determination is against the great weight and preponderance of the evidence. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that on _____, he slipped and fell landing on his left side, with his left arm underneath him, injuring his left shoulder, left elbow, and left wrist. The claimant sought medical treatment at a hospital emergency room on _____, and was diagnosed with a left rotator cuff tear. The claimant underwent shoulder surgery for a torn rotator cuff on November 19, 2002. The claimant testified that after the surgery he continued to have pain, numbness, and tingling in his left arm. In a medical report dated June 5, 2003, as well as subsequent medical reports, the treating doctor, Dr. P, opined that the claimant's diagnosis of left hand carpal tunnel syndrome, left ulnar irritation at the elbow, left cubital tunnel syndrome, and left shoulder impingement syndrome with rotator cuff tear and distal acromioclavicular joint arthropathy, are a direct result of his accident on _____. In a letter dated July 1, 2003, Dr. P opined that the claimant did not have prior median and ulnar nerve symptoms in his left upper extremity prior to his accident on _____. In a medical report dated September 24, 2003, the required medical examination doctor, Dr. B, opined that the claimant's "left wrist did suffer a contusion, as did the elbow and shoulder, due to this fall, and that he has a diagnosis of left carpal tunnel syndrome." The claimant contends that his compensable injury of _____, extends to include his current left upper extremity conditions. The carrier contends that the claimant has preexisting shoulder conditions that are not related to the fall of _____.

There was conflicting medical evidence. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). 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 appellate-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. When reviewing the factual sufficiency of the evidence, we should set aside the decision of the hearing officer only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. The hearing officer specifically comments that she was persuaded by the medical evidence that the claimant's compensable injury of _____, includes left elbow cubital tunnel syndrome, left ulnar nerve contusion, left ulnar nerve irritation at elbow, and left carpal tunnel syndrome. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or 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 **VALLEY FORGE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Margaret L. Turner
Appeals Judge