

APPEAL NO. 040255  
FILED MARCH 22, 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 decided that the respondent (claimant herein) sustained a compensable injury on \_\_\_\_\_, and that the claimant had disability from July 31 through August 5, 2003, and from August 25 through December 22, 2003. The appellant (carrier herein) files a request for review in which it contends that the evidence was contrary to the claimant sustaining an injury and that there was no basis for the hearing officer to find disability. The claimant responds that the evidence supports the decision of the hearing officer.

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 issue of whether or not the claimant sustained an injury is a question 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 finding of injury was sufficiently supported by the evidence in the record.

Disability is also a question of fact. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. There was conflicting evidence regarding disability and it was the province of the hearing officer to resolve these conflicts. We perceive no legal 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 **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**ROBERT PARNELL  
AIG CLAIMS SERVICE  
8144 WALNUT HILL LANE, SUITE 1600  
DALLAS, TEXAS 75231.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge