

APPEAL NO. 040591  
FILED MAY 5, 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 March 1, 2004. The hearing officer decided that the appellant/cross-respondent's (claimant herein) compensable injury extends to include an injury to his L4-5 disc, but does not extend to include an injury to his T11-12 disc, and that the claimant had disability from September 25, 2002,<sup>1</sup> through November 18, 2003. The claimant appeals the hearing officer's disability determination, contending that the evidence established that the claimant had disability beyond November 18, 2003. The respondent/cross-appellant (carrier herein) replies that the hearing officer's decision correctly determined that the claimant did not have disability after November 18, 2003. The carrier files a request for review in which it appeals the hearing officer's determination that the claimant's injury extended to his lumbar spine and the periods of disability found by the hearing officer. The claimant responds that the evidence supports the hearing officer's determination that the claimant's injury includes an injury to his lumbar spine and that the claimant had disability.

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, as reformed.

The issues of 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

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<sup>1</sup> At some points in his decision the hearing officer uses the date September 15, 2002, rather than September 25, 2002. These obviously are typographical errors, and we reform the hearing officer's decision to read September 25, 2002, wherever it reads September 15, 2002.

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 **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Margaret L. Turner  
Appeals Judge