

APPEAL NO. 040964
FILED JUNE 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 was held on March 31, 2004. The hearing officer determined that the appellant (claimant herein) did not sustain a compensable injury on _____; that the claimant did not have disability; and that the respondent (carrier herein) did not waive its right to dispute the compensability of the injury. The claimant files a request for review, contending that the hearing officer's decision is contrary to the evidence. The carrier responds that the evidence supported 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 issues of injury and disability are questions of fact for the hearing officer. 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 regarding these issues, 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 resolution of the issues of injury and disability was sufficiently supported by the evidence in the record.

Section 409.021(a) requires that a carrier act to initiate benefits or to dispute compensability within seven days of first receiving written notice of an injury or waive its

right to dispute compensability. See Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002); Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003. The hearing officer found that the carrier did not waive due to the fact the hearing officer found that the carrier first received written notice on June 10, 2003, and filed a notice with the Texas Workers' Compensation Commission (Commission) on June 13, 2003, certifying that it would pay benefits as accrued. The claimant argues that the carrier failed to pay or dispute within seven days of first receiving written notice of an injury. The issue really turns on what date the carrier first received written notice and what date the carrier filed its acceptance of the claim with the Commission. These are factual questions. The hearing officer pointed out in his decision that the evidence of these dates was murky. However, applying the standard of factual sufficiency review discussed above, we find that there is sufficient evidence in the record to support the hearing officer's factual findings regarding the issue of carrier waiver. Those factual findings clearly support the legal conclusion that the carrier did not waive its right to contest compensability.

The decision and order of the hearing officer are affirmed.

The carrier states that it's the true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS INSURANCE** and the name and address of its registered agent for service of process is

**HARTFORD UNDERWRITERS INSURANCE
9020 NORTH CAPITAL OF TEXAS HWY, SUITE 555
AUSTIN, TEXAS 78759-7232.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Chris Cowan
Appeals Judge