APPEAL NO. 041258
FILED JULY 1, 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 (CCH) was held on May 4, 2004. The hearing officer decided that the respondent (claimant herein) did not sustain a compensable injury in the form of an occupational disease, but did sustain a single event injury on _____, and the claimant had disability beginning on January 23, 2004, and continuing through the date of the CCH. The hearing officer also determined that the claimant timely notified the employer of his injury. The appellant (carrier herein) files a request for review in which it argues that the hearing officer improperly added an issue by deciding the claimant sustained a specific injury when the issue before him was whether the claimant sustained a repetitive trauma injury. The carrier also argues that there is insufficient evidence supporting the hearing officer's findings of injury and 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.

We find no merit in the carrier's argument that the hearing officer improperly added an issue. We understand that the injury issue before the hearing officer was stated in terms of occupational disease. However, in Texas Workers' Compensation Commission Appeal No. 972559, decided January 21, 1998, we stated as follows:

> We agree that the Appeals Panel has stated that it is up to the parties, and not the hearing officer, to formulate the issue. Notwithstanding, it is also proper for hearing officer to determine the issues that are actually litigated and disputed between the parties and recast the wording of an issue from the [benefit review conference (BRC)] report when it appears that it diverges from that which was claimed, defended, and mediated by the parties at the BRC and CCH. Texas Workers' Compensation Commission Appeal No. 952129, decided January 31, 1996; Texas Workers' Compensation [Commission] Appeal No. 94301, decided April 25, 1994; Texas Workers' Compensation [Commission] Appeal No. 94269, decided April 20, 1994; and Texas Workers' Compensation [Commission] Appeal No. 93958, decided December 3, 1993.

In Appeal No. 972559, *supra*, we reversed the decision of a hearing officer finding no repetitive trauma injury (occupational disease) and remanded to him to determine whether the claimant had a specific injury. In Texas Workers' Compensation Commission Appeal No. 950678, decided June 8, 1995, we reversed the decision of a hearing officer that the claimant sustained a repetitive trauma injury and rendered a decision that the claimant suffered a specific injury even though the issue at the CCH

had been framed in terms of repetitive trauma injury. In the present case, the hearing officer did not add an issue, but merely decided the issue litigated before him in light of the evidence presented.

There was conflicting evidence presented on the disputed issues of injury and disability. The issues 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 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). Applying this standard, we find no basis to reverse the hearing officer's resolution of the injury or disability issues.

The decision and order of the hearing officer are affirmed.

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

PRENTICE-HALL CORPORATE SYSTEMS, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

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Chris Cowan
Appeals Judge