

APPEAL NO. 041568
FILED AUGUST 19, 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 June 2, 2004r. The hearing officer decided that: (1) the appellant's (claimant herein) compensable injury of _____, does not extend to or include a left inguinal hernia; (2) the claimant did not have disability from May 13, 2003, through February 16, 2004; and (3) the claimant reached maximum medical improvement (MMI) on May 12, 2003, with a 0% impairment rating (IR). The claimant files a request for review in which he argues that these determinations were contrary to the evidence. The respondent (carrier herein) filed a response, urging affirmance.

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.

EXTENT OF INJURY/DISABILITY

We have held that the question of the extent of an injury and disability are questions of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. 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 (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 (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 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company 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 Company, 715 S.W.2d 629, 635 (Tex. 1986)

In the present case, there was simply conflicting evidence on the issues of extent of injury and disability, 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.

MMI/IR

The hearing officer did not err in determining that the claimant reached MMI on May 12, 2003, with a 0% percent IR, as certified by the Commission-appointed designated doctor. The claimant asserts that the designated doctor's certification is contrary to the great weight of the other medical evidence and requests adoption of his treating doctor's certification of February 16, 2004, which he believes fully evaluates his condition. Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. We view the report of the claimant's treating doctor as representing a difference in medical opinion, which does not rise to the level of the great weight of medical evidence contrary to the designated doctor's report. The hearing officer's MMI/IR determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

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
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A. Knapp
Appeals Judge