

APPEAL NO. 041635
FILED AUGUST 27, 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 May 4, 2004. The hearing officer decided that the appellant's (claimant) compensable injury of _____, does not extend to cardiac arrhythmia. The claimant contends the evidence established that the claimant's cardiac arrhythmia was a result of treatment of his compensable injury. The respondent (carrier) 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.

We have held that the question of extent of injury is a question 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, 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). In the instant case, the critical question was whether the post-surgery cardiac arrhythmia was caused by the medical treatment of the compensable injury. If it was, then it would be compensable. Texas Workers' Compensation Commission Appeal 950206, decided March 28, 1995. The hearing officer is correct in stating that expert medical evidence was necessary in this case. We have held that when a subject is one of such scientific or technical nature that a finder of fact cannot properly be assumed to have, or be able to form, opinions of his or her own based on the evidence as a whole, and aided by his or her own experience and knowledge, testimony of experts in that subject matter is necessary. Appeal No. 950206, *supra*. After reviewing all the evidence, including medical testimony, the hearing officer determined that the evidence was not sufficient to show any new damage to the physical structure of the claimant's body resulting from the medical treatment of the compensable injury. The claimant essentially contends that the hearing officer failed to draw inferences favorable to him from the evidence presented. 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 on the issue of extent of injury, 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 **COMMERCE AND INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Gary L. Kilgore
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge