

APPEAL NO. 041694
FILED AUGUST 31, 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 17, 2004. The hearing officer decided that the respondent (claimant herein) did sustain a compensable injury on _____, and that the claimant had disability for the period beginning on October 16 and continuing through December 10, 2003. The appellant (carrier herein) filed a request for review arguing that the determinations were contrary to the evidence. There is no response from the claimant in the file.

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.

There was no question in this case that the claimant had a very serious medical condition known as necrotizing fasciitis and sepsis. The issue was whether it was work related. The carrier also appears to argue on appeal that the period of disability ended as of December 9, 2003, not December 10, 2003. We have held that the questions of 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, 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 on the issue of whether the claimant's condition was work related, and it was the province of the hearing officer to resolve these conflicts. On the issue of the period of disability, the claimant agreed with the carrier's attorney that he had been released to return to work

on December 10, 2003. The hearing officer concluded that the period of disability ended on December 10, 2003. The claimant's testimony is ambiguous in that he might have seen his doctor on December 10, 2003, and been released to return to work as of the next day or he may have been released to actually start working on December 10, 2003. Applying the above standard of review, we find that the hearing officer's decision on both issues 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals judge

Edward Vilano
Appeals Judge