

APPEAL NO. 041800
FILED SEPTEMBER 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 was held on July 7, 2004. The hearing officer determined that the appellant/cross-respondent's (claimant) compensable injury of _____, includes an injury to the low back consisting of progressive degenerative disc disease at L4-5 level with stenosis and status post lumbar laminectomy, decompression and discectomy at the L4-5 level, but does not include a disc extrusion at the L2-3 level towards the left side without significant spinal stenosis with moderate impression the thecal sac, instability at the L2-3 level and L2-3 degenerative disc disease. The claimant appealed, disputing that portion of the extent-of-injury determination that was adverse to the claimant. The respondent/cross-appellant (carrier) appealed the other portion of the extent-of-injury determination that was adverse to the carrier. The carrier responded urging, affirmance of the hearing officer's extent-of-injury determination that the compensable injury does not include a disc extrusion at the L2-3 level towards the left side without significant spinal stenosis with moderate impression the thecal sac, instability at the L2-3 level and L2-3 degenerative disc disease.

DECISION

Affirmed, as reformed.

We reform Finding of Fact No. 4 to correct a typographical error regarding a reference to the lumbar disc at "L5-L5" level. Finding of Fact No. 4 is corrected to reflect that: On _____, the claimant sustained a compensable injury to the low back for which the claimant underwent a decompression and discectomy at "L4-5" level on April 17, 1997.

Extent of injury is a question of fact. 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). Applying the standard of review outlined above, we find no reversible error.

The hearing officer's decision and order are affirmed, as reformed.

The true corporate name of the insurance carrier is **FIDELITY & CASUALTY COMPANY OF NEW YORK** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge