

APPEAL NO. 041849
FILED SEPTEMBER 20, 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 1, 2004. The hearing officer decided that the appellant's (self-insured herein) compensable injury of _____, extended to include a psychological condition of post-traumatic stress disorder and a temporomandibular joint injury. The self-insured files a request for review contending these determinations are contrary to the evidence and alleging various procedural errors. The respondent (claimant herein) replies, 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.

The self-insured argues that the hearing officer could not find a psychological injury based upon expert medical evidence from a psychologist, asserting that a psychologist is not a doctor pursuant to Section 401.011(17). We stated as follows in Texas Workers' Compensation Commission Appeal No. 970845, decided June 23, 1997:

Although a Ph.D psychologist is not listed under the definition of "doctor" in Section 401.011(17), medical evidence may be generated by a number of sources other than by individuals who are defined as "doctors" in Section 401.011(17). That medical evidence may be in the form of nurse's notes, physical therapist's reports and notes, (we note in this case carrier offered "Occupational Therapy Notes" which are signed by a physical therapist rather than a doctor), and by any number of other health care providers. See Texas Workers' Compensation Commission Appeal No. 970730, decided June 9, 1997, for a discussion on this point and a listing of citations where we have regarded the reports of clinical psychologists as part of the general category of medical evidence.

The self-insured asserts other procedural errors—that the hearing officer misstates the evidence in his decision and that the exhibits were not numbered in compliance with the policies of the Texas Workers' Compensation Commission. Nothing in our review shows that any of these alleged errors rise to the level of reversible error.

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). 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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**OFFICE OF THE CITY CLERK
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Gary L. Kilgore
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Robert W. Potts
Appeals Judge