

APPEAL NO. 041966
FILED SEPTEMBER 22, 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 21, 2004. The hearing officer determined that the appellant's (claimant) compensable injury of _____, did not include lumbar strain/sprain, thoracic and lumbar neuritis/radiculitis, left shoulder strain/bursitis, and left elbow epicondylitis. The claimant appealed this determination based on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed, as reformed.

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). 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 specifically found that the claimant's compensable injury of _____, did not include lumbar strain/sprain, thoracic and lumbar neuritis/radiculitis, left shoulder strain/bursitis, and left elbow epicondylitis, however, we note that the hearing officer's Conclusion of Law No. 3 and the decision contain a typographical error as to the date of injury and an omission of the word "not". The typographical error and omission are a clerical oversight. Accordingly, we reform the hearing officer's Conclusion of Law No. 3 and the decision to conform to Finding of Fact No. 4 and to read as follows:

The claimant's compensable injury on _____ did not include lumbar strain/sprain, thoracic and lumbar neuritis/radiculitis, left shoulder strain/bursitis and left elbow epicondylitis. [Emphasis added.]

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

The true corporate name of the insurance carrier is **FEDERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GERARD BUTLER
2001 BRYAN STREET, SUITE 3400
DALLAS, TEXAS 75201-3068.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge