

APPEAL NO. 042526  
FILED NOVEMBER 18, 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 (CCH) was held on September 14, 2004. The hearing officer resolved the disputed issues by deciding that the compensable injury of \_\_\_\_\_, extends to and includes C5-6 and C6-7 disc herniations of the cervical spine, degenerative disc disease of the cervical spine, and cervical radiculopathy, probable entrapment of the median and ulnar nerves bilaterally at the wrists, and probable trauma or entrapment of the right median nerve between the elbow and the wrist; that the compensable injury of \_\_\_\_\_, does not extend to and include right rotator cuff syndrome; and that the respondent (claimant) had disability beginning April 1, 2004, and continuing through the date of the CCH. The appellant (carrier) appealed, disputing the disability determination as well as the extent-of-injury determination that was favorable to the claimant. The carrier contends that the hearing officer's determination that the injury extends to and includes cervical problems is against the great weight and preponderance of the evidence.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. Extent of injury and disability are questions of fact. 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).

In the present case, there was simply conflicting evidence on the issues of extent of injury and disability, 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.

We affirm the decision and order of the hearing officer.

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

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

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge