APPEAL NO. 042831
FILED DECEMBER 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 October 20, 2004. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, includes possible re-tear of the posterior horn of the medial meniscus, Grade III chondromalacia in the medial and anterior compartments, small osteophytes in all three compartments of the knee, and synovitis but does not include Grade II / high grade tear of the medial collateral ligament, horizontal and probable radial tear of the lateral meniscus, or shallow trochlear groove. The appellant (self-insured) appealed, disputing the extent-of-injury determination favorable to the respondent (claimant). The self-insured contends that the disputed determination is against the great weight and preponderance of the evidence and contends that the hearing officer did not make a factually or legally correct interpretation of the evidence presented. The appeal file does not contain a response from the claimant. The determination that the compensable injury of _____, does not include Grade II / high grade tear of the medial collateral ligament, horizontal and probable radial tear of the lateral meniscus, or shallow trochlear groove was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed as reformed.

It was undisputed that the claimant sustained a compensable injury on _____. 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). While conflicting medical evidence was presented, we do not agree that the evidence in support of the extent-of-injury determination made by the hearing officer is merely speculative.

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 self-insured correctly points out in its appeal that the hearing officer's decision contains a typographical error as to the date of injury. We correct this typographical error by reforming the decision, Stipulation 1.C., Findings of Fact Nos. 4 and 5, as well as Conclusions of Law Nos. 3 and 4 to read _____, as the date of the claimant's compensable injury rather than (incorrect date of injury).

We affirm the decision and order of the hearing officer as reformed.

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

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Robert W. Potts
Appeals Judge