APPEAL NO. 950175

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 December 12, 1994, in (city), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were injury, disability and average weekly wage (AWW). The parties stipulated that the respondent's (claimant herein) AWW was $550.00. The hearing officer found that the claimant suffered a compensable injury on (date of injury), and has had disability from July 19, 1994, continuing through the date of the CCH. The appellant (carrier herein) files a request for review arguing that the evidence did not sufficiently support the findings of the hearing officer as to injury and disability. The claimant does not file a response to the carrier's appeal.

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 claimant testified that he worked for the employer as a truck driver and had for a number of years worked primarily as a truck driver for a number of different companies. In (month year), the claimant was dispatched to (city) by the employer to retrieve a trailer and another driver, (Mr. S). Mr. S had been involved in an accident and his tractor could not be driven. The claimant testified that on (date of injury), he attempted to raise Mr. S's trailer to hook it up to the claimant's tractor. The claimant alleged when he did so he injured his neck, right shoulder and upper back.

The claimant testified that he initially thought these injuries to be minor and he would recover from them. The claimant testified that his pain worsened and on July 16, 1994, he went to the emergency room at (county hospital), but did not receive treatment there. The claimant next saw (Dr. H), who placed the claimant on an off work status on July 19, 1994. On August 4, 1994, at the request of the carrier the claimant transferred his treatment to (Dr. D), who continued the claimant off work and recommended surgery.

The carrier denied that the claimant had a compensable injury. It called (Mr. P), the employer's terminal manager, who testified that the claimant never mentioned an injury until a dispute arose concerning the claimant's wages. The carrier put in an affidavit from Mr. S stating that the claimant was not a truthful person and stating that the claimant suggested that Mr. S exaggerate the extent of injury from his own accident to obtain a larger settlement. The carrier also presented evidence that the claimant had a number of prior workers' compensation claims and had misrepresented his number of prior claims on two occasions.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section

410.165(a) provides that the contested case 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 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).

Generally, corroboration of an injury is not required and may be found based upon a claimant's testimony alone. Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). In the present case the claimant testified that he had an injury, and the reports of Dr. H and Dr. D were consistent with traumatic injury. The entire case of the carrier was based on attempting to show that the claimant was not a credible witness. Such credibility questions are for the hearing officer as finder of fact. We have also on numerous occasions held that the Appeals Panel should not set aside the decision of a hearing officer because the hearing officer may have drawn inferences and conclusions different than those the Appeals Panel deems most reasonable, even though the record contains evidence of inconsistent inferences. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Texas Workers' Compensation Commission Appeal No. 93334, decided June 14, 1993; Texas Workers' Compensation Commission Appeal No. 93053, decided March 1, 1993; Texas Workers' Compensation Commission Appeal No. 92539, decided November 25, 1992.

Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. In the present case the claimant's testimony supports the hearing officer's finding of disability and this finding is further supported by the medical opinions of Dr. H and Dr. G.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge