APPEAL NO. 950234

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 January 24, 1995, in (city), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were injury and timely reporting of injury. The hearing officer found that the respondent (claimant herein) was injured in the course and scope of her employment and timely reported her injury to her employer. The appellant (carrier herein) files a request for review contending that the hearing officer's finding of injury is against the great weight and preponderance of the evidence and that the hearing officer erroneously cut off questioning of the claimant by the carrier. The claimant does not respond.

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 on (date of injury), she lifted computer monitors at work weighing from 15 to 20 pounds apiece. The claimant testified that she did not have pain at the time and worked the rest of the day. The claimant testified that she awoke on (date), with severe back pain. The claimant testified that she went to work the morning of (date), but had to leave work and that afternoon and was admitted to the hospital, where she had back surgery on October 8, 1993. The claimant also testified that she had previous back surgery in 1989, and had recuperated fully therefrom prior to (month year).

While in the hospital the claimant was visited by her supervisor, (Ms. S). Ms. S stated as follows in a sworn statement:

> I visited [claimant] in the hospital prior to her surgery. In discussing what she thought caused the back pain, she said that she had awakened with the pain on that Wednesday (date) morning. She was not aware of anything unusual occurring that might have caused the pain. We both discussed the movement of equipment on Tuesday, (date of injury), and felt that could have been the contributing factor.

The carrier presented evidence that the claimant originally checked a form indicating that her back problem was not work related. The first record of the claimant mentioning a work-related injury to her doctors is dated September 19, 1994, in which (Dr. R) states as follows:

> She does indicate that on (date of injury) she was lifting a monitor and did not feel immediate pain but on (date) she did wake up with this pain. This was not documented in our chart initially when [Dr. G] saw her and the patient indicates

that at that time she was having such severe pain that she did not particularly care what may have caused the problem, but just wanted the problem treated.

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 great weight and preponderance 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 the testimony of the claimant supports a finding of a compensable injury. 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). Carrier's evidence that the claimant did not initially give a history that she was injured on the job to her doctors and that the claimant may have had doubts about how she was hurt certainly argues a different result. We cannot say that such evidence constitutes the great weight and preponderance of the evidence.

Carrier contends that the hearing officer erred in cutting short its cross-examination of the claimant on the issues of other possible causes for her back problems. The carrier questioned the claimant as to whether getting out of bed, lifting things other than the monitors, carrying groceries, housework, bending and stooping to make beds, doing dishes and lifting children were things she did prior to the onset of her back pain, and if so, could they have contributed to her back problems. After this line of questioning the hearing officer asked the witness if she could think of anything else she did prior to the date of the injury that could have caused her back condition and she replied that she knew of nothing. The hearing officer stated as follows to counsel for the carrier: All right. She's answered that. If you have a specific item that you want to ask about and if you want to raise a sole cause

defense on that item, you may do so; otherwise, fishing for something that she might have done that you can try to find some little spot that she might have done something, I've heard enough of that.

For any evidentiary ruling to constitute reversible error harm must be shown. *See* Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394, 396 (Tex. 1989). Reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We fail to see what critical evidence that the carrier could have developed following the line of questioning it complains it was stopped from pursuing unless sole cause was in issue. As we stated in Texas Workers' Compensation Commission Appeal No. 94217, decided March 31, 1994:

> This is to say that generally whether or not a person had a prior injury or a subsequent injury has little probative value in determining the validity [of] a person's alleged compensable injury, unless the carrier undertakes the burden of establishing that the prior or subsequent injury is the sole cause of the person's condition.

We affirm the decision and order of the hearing officer.

Gary L. Kilgore
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge