APPEAL NO. 950306

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The first session of the contested case hearing (CCH) was opened on November 22, 1994, with the record closing on December 16, 1994, after a second session of the CCH was held on that date. Both sessions of the CCH were held in (city), Texas, with (hearing officer) presiding as hearing officer. The original issues at the first session of the CCH were injury, disability and average weekly wage (AWW). The parties entered into an agreement at the CCH on the AWW, agreeing that the AWW was $409.48. At the first session of the CCH the hearing officer found good cause to add the issue of whether the appellant (carrier herein) timely disputed the claim. At the second session of the CCH the respondent (claimant herein) withdrew his request for resolution of the added issue. The hearing officer found that the claimant suffered a compensable injury on (date of injury) and as a result had disability from (date), continuing through the date of the CCH. The carrier files a request for review arguing that the overwhelming weight of the evidence was contrary to the above findings of the hearing officer. The claimant replies that the findings of the hearing officer are sufficiently supported by the evidence.

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 injured his neck and low back while moving a three-inch pump on (date of injury). Two other employees testified, through a translator, that the only pump on the work site was a two-inch pump which was not touched by the claimant. These witnesses also testified that the claimant never said he was hurt and did not appear injured. Also in evidence were statements written in English and signed by these witnesses stating basically the same as their testimony. A copy of an invoice from the employer's regular equipment supplier showed that a three-inch pipe was delivered to the job site on (date of injury).

The claimant testified that he reported the injury to (Mr. C) the night of (date of injury), and was told that they would discuss it the next morning. The next morning Mr. C terminated the claimant's employment. Mr. C testifies that he terminated the claimant because he had committed a safety violation (unrelated to the alleged injury) and argued with the general contractor about it. Mr. C testified that the claimant told him nothing about the back injury until after the termination. The carrier takes the position that this is a spite claim. The claimant appears to believe, on the other hand, that he was terminated because he reported an injury.

In any case the claimant saw a doctor on (date), whose report indicated the presence of tenderness and muscle spasm upon physical examination. The doctor also placed the

claimant on an off work status. The carrier contended that these problems might relate back to an injury the claimant had in 1990.

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).

There was strongly conflicting evidence in this case. 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). We cannot say that the hearing officer's decision was contrary to the overwhelming weight of the evidence.

Disability is also a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. 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 this case the medical evidence supported, rather than contradicted, the claimant's testimony of disability.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge