APPEAL NO. 960020

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 November 22, 1995, in [city], Texas, with [hearing officer] presiding as hearing officer. The issues at the CCH were injury and disability. The hearing officer found that the appellant (claimant herein) did not suffer an injury in the form of an occupational disease and did not have disability. The claimant appeals these determinations contending her exposure to hazardous chemicals and metals, including nickel, had resulted in her suffering an occupational disease and disability. The respondent (carrier herein) replies that the claimant failed to prove the alleged occupational disease arose out of her employment or caused her any disability.

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 she had worked for the employer, a manufacturer of air conditioning units, since the early 1980s. The claimant testified that in 1991 she began having urticaria (hives), which became progressively worse. The claimant testified that on [date of injury], while "clipping coils," she had a particularly severe attack of swelling and itching on both hands. The employer transferred the claimant to job of placing warranty papers in plastic bags and her condition improved, although it did not totally resolve. The claimant worked in the warranty area from [date of injury], until June 13, 1995, at the same wage as before she was transferred to this area.

There is conflicting medical evidence concerning the cause of the claimant's condition. As the hearing officer points out in his Statement of the Evidence, there is medical evidence to establish a relationship between the claimant's hives and exposure to nickel, but this evidence fails to establish that the claimant was exposed to a higher level of nickel working for employer than she was exposed anywhere else. The claimant testified that she worked around a lot of metal and she had been told all metal included nickel. She was unable to state who had told her this. The reason for her belief that work-related exposure was at the root of her problem is that it improved whenever she was not at work.

There was medical evidence indicating that the etiology of the claimant's hives was undetermined and that hives is that it is difficult both to diagnose hives and to determine their cause. There is evidence that items unrelated to work, such as the claimant's wedding rings and clothing, would cause her hives to recur. There are also notes in the medical records indicating that the claimant had a family history of hives, although the claimant testified that this history was not very significant. There was evidence from the employer that testing showed very little nickel at the job site and levels well within hygienic standards set by the Occupational Safety and Health Administration (OSHA).

The hearing officer decided that the claimant failed to establish that she had an occupational injury because she failed to prove that she was exposed to sufficient amounts of nickel in her work environment to cause her hives. It was the claimant's burden to prove that her condition was work related. There was conflicting evidence as to whether or not her hives were related to her work. 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). We do not find that to be the case here.

The decision and order of the hearing officer is affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge