APPEAL NO. 992468

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On October 13, 1999, a contested case hearing (CCH) was held. With regard to the issues before her, the hearing officer found that the appellant (claimant herein) was not in the course and scope of employment when she sustained a low back injury on _____. The claimant appeals, challenging specific findings of the hearing officer and arguing that she was in the course and scope of her employment when she was aiding a coworker in an emergency situation. The respondent (self-insured herein) replies that the findings specifically challenged by the claimant were supported by the evidence, that findings not appealed by the claimant were sufficient to support the decision of the hearing officer and that the claimant was not in the course and scope of her employment at the time she was injured.

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 essential facts of this case are not in dispute. The claimant was employed as a second-grade teacher for the self-insured. The claimant testified that she had been so employed for 27 years. The claimant also testified that she was at work on _____, which was the last day of the school year, so there were no students in school. The claimant stated that while in the teacher's lounge she heard a screeching noise and went outside to see that another teacher, whom she had worked with for 15 years, had been involved in a motor vehicle accident (MVA). The claimant testified that other teachers also rushed to the scene. The claimant testified that the teacher who had been involved in the accident was not conscious and that 911 was called. The claimant testified that after emergency personnel arrived, she called the husband of the injured teacher. The claimant stated that after the other teacher was removed from her vehicle with the use of the "Jaw of Life," the claimant took the other teacher's purse and got in the cab of the ambulance. The claimant testified that neither the principal nor the assistant principal was at the school at the time of the accident and that she provided information to the hospital concerning the injured teacher. The claimant testified that while she was getting out of the ambulance at the hospital she felt a pull in her back. The claimant stated that while she was at the hospital the injured teacher's husband and the school's principal arrived. The claimant testified that the principal thanked her for accompanying the injured teacher to the hospital. The claimant stated that the back pain she had from getting out of the ambulance persisted and she later sought treatment for it.

The hearing officer's findings of fact and conclusions of law included the following:

FINDINGS OF FACT

2. Claimant sustained an injury to her low back as Claimant stepped out

of the ambulance on _____.

3. Claimant was not requested to accompany her co-worker in the ambulance to the hospital by any supervisor and did so of her own volition.

4. Claimant deserted her employment when Claimant decided to ride in the cab of the ambulance on _____.

5. Claimant rendered no medical care at the scene of the accident and any emergency under the emergency doctrine ended at the time the ambulance arrived.

6. Claimant was not furthering the affairs or interests of the employer when the Claimant accompanied a co-worker to the hospital in the cab of the ambulance.

7. Claimant was not in the course and scope of her employment when she sustained a low back injury while exiting an ambulance on _____.

CONCLUSIONS OF LAW

3. Claimant did not sustain a compensable injury on _____ to the low back.

4. Claimant was not furthering the affairs or interest of the employer when the Claimant accompanied a co-worker via ambulance to the hospital sustaining an injury to the low back on _____.

The claimant argues that the hearing officer erred in her Findings of Fact Nos. 4, 5, 6, and 7 as the claimant was injured in the course and scope of her employment while furthering the affairs of the employer by aiding a coworker in an emergency. The self-insured argues that since the claimant did not specifically reference Finding of Fact No. 3 or any of the hearing officer's conclusions of law that these matters are not before us on appeal and are beyond our jurisdiction. We reject the self-insured's argument in this regard. Requests for review are not required to have the specificity of pleadings and clearly the claimant is appealing the factual sufficiency of the hearing officer's fact findings as well as whether the hearing officer properly applied the law, particularly in regard to the "emergency doctrine." While the claimant also argues that the personal comfort doctrine and the positional risk test placed the claimant in the course and scope of her employment, we do not find either of these doctrines applicable to the present case. We also note the claimant did not raise the applicability of the positional risk test at the CCH.

The real question in the present case is whether the correct application of the emergency doctrine requires us to reverse the hearing officer's decision as a matter of law. The emergency doctrine is described as follows by a commentator on the Texas workers' compensation law who is presently serving as Chief Justice of the Texas Fourth Court of Appeals:

> If, in the course of his employment, an emergency arises, and without deserting his employment, a worker does what he feels is necessary in advancing the interests of his employer, he stays within the scope. This includes rescuing fellow employees, third parties, or the employers' property.

PHILLIP D. HARDBERGER, TEXAS WORKERS' COMPENSATION TRIAL MANUAL, SECOND EDITION, p. 22-6 (1991). Chief Justice Hardberger specifically cites the following cases in support of the foregoing rule: Hartford Accident & Indemnity Co. v. Frye, 55 S.W.2d 1092 (Tex. Civ. App.-Amarillo 1932, writ dism'd); Texas Employers' Insurance Association v. Thomas, 415 S.W.2d 18 (Tex. Civ. App.-Fort Worth 1967, no writ history); and General Accident, Fire & Life Assurance Corp. v. Evans, 201 S.W. 705 (Tex. Civ. App.-Dallas 1918, no writ history). Both Frye, *supra* and Evans deal with employees who died from fumes while trying to rescue coworkers from the fumes. Thomas, *supra* deals specifically with a worker who was killed while rendering assistance at the scene of an MVA and who fell off a bridge while looking for the billfold of a party involved in the accident. Our review of these cases, as well as the few Appeals Panel decisions in which the emergency or rescue doctrine is mentioned--Texas Workers' Compensation Commission Appeal No. 970053, decided February 18, 1997; Texas Workers' Compensation Commission Appeal No. 951577, decided November 8, 1995; and Texas Workers' Compensation Commission Appeal No. 93271, decided May 24, 1993,--do not lead us to conclude that reversal of the hearing officer is mandated in the present case.

First, we note that the hearing officer's findings of fact are based upon her authority to resolve conflicting evidence. 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). 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).

Applying this standard, we do find a basis as a matter of law for reversing the factual findings of the hearing officer. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). The hearing officer's factual findings are sufficient to support her conclusions of law.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Elaine M. Chaney
Appeals Judge