

APPEAL NO. 032177
FILED SEPTEMBER 24, 2003

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 July 17, 2003. The hearing officer resolved the disputed issues by deciding that the compensable injury of _____ extended to and included the cervical spine, lumbar spine, and right shoulder, and that the respondent (claimant) had disability from December 30, 2002, through the date of the CCH. The appellant (carrier) appealed, arguing that there is insufficient evidence to support the determinations of the hearing officer. The claimant responded, urging affirmance.

DECISION

Affirmed.

Extent of injury and disability are factual questions for the hearing officer to resolve. Conflicting evidence was presented regarding these issues. Section 410.165(a) provides that the 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 to 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). The hearing officer's decision is supported by sufficient evidence and is not so against 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The carrier, on appeal, argues that the claimant has no recoverable disability because the employer made a bona fide offer of employment (BFOE) in accordance with the limitations imposed by her treating doctor. We note that whether or not the employer made a BFOE was not an issue at the CCH. Further, the Appeals Panel has stated on numerous occasions that the issues of BFOE and disability are distinct. Texas Workers' Compensation Commission Appeal No. 001143, decided July 3, 2000. Disability concerns whether a claimant is unable to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury, while a BFOE

is used to determine the amount of temporary income benefits (TIBs) due, if any. Id. To be clear, the existence of a BFOE does not result in the end of disability but only a determination of post-injury earnings for purposes of entitlement to TIBs. Id.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **GLOBE INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge