APPEAL NO. 032594
FILED NOVEMBER 10, 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 was held on August 27, 2003. The hearing officer decided that the respondent's (claimant herein) injury extended to and includes strokes suffered after August 7, 2002. The appellant (carrier herein) files a request for review, arguing that the decision of the hearing officer is contrary to the evidence. The claimant responds that the evidence supports the decision of the hearing officer.

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 the case are outlined as follows in the decision of the hearing officer:

> The facts of this case are largely not in dispute. Claimant sustained a compensable injury on _____ to the cervical area. Claimant underwent surgery for the cervical injury on August 7, 2002. While checking out the hospital on August 8, 2002 Claimant began to have trouble communicating and weakness on his left side. Claimant returned to the emergency room but was assured it was probably the medications. Claimant went home but found the symptoms on the left side were worse the next day. Claimant returned to the hospital and testing was done that indicated significant narrowing bilaterally of both carotids. Surgery was scheduled for the left carotid on August 12, 2002. Claimant admits that the blockage was pre-existing but contends that the compensable injury includes the onset of the strokes and asserts that the cervical surgery aggravated the condition and brought on an immediate stroke. Carrier contends that the Claimant's condition was pre-existing and brought on by several high risk factors and was not directly related to the compensable injury.
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> Of note are the various medical reports that speak to causation. [Dr. C] (in a report of November 1, 2002) states that the carotid stenosis was obviously pre-existing but that the carotid arteries must be manipulated during the surgery to keep them protected while performing the cervical surgery. [Dr. C] pointed out that the symptoms started within 24 hours of the surgery and went on to state that the stroke should be included as part of the compensable injury. [Dr. L] was appointed by the [Texas Workers' Compensation Commission (Commission)] to address extent and noted that the incision was right around the carotid area on the left and

> elaborated that the surgery was a contributing factor to the stroke and as such would be compensable. Only [Dr. H] stated that the surgery itself did not cause the stroke and was a coincidence, despite the fact that it occurred within several days of the surgery. It is noted that the stroke began within 24 hours and that the symptoms were noted immediately. Claimant returned to the emergency room and unfortunately was sent home. However based on the reports of [Dr. C] and [Dr. L], there was sufficient evidence that the cervical surgery contributed to the strokes suffered shortly after the surgery and would be deemed compensable.

On appeal, the carrier does not take issue with the hearing officer's rendition of the facts of the case, but argues that the hearing officer erred in giving more weight to the opinions of Drs. C and L than to the opinion of Dr. H. The claimant responds that it was the province of the hearing officer to determine what weight to give the evidence.

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). 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).

The extent of an injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. As stated in Maryland Casualty Co. v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e. per curiam, 432 S.W.2d 515):

> The law is well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefore, causes other injuries which render the employee incapable of work.

The issue of whether the subsequent injury was caused by the compensable injury, or the proper and necessary treatment of it, is generally one of fact. *See* Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993; Texas Workers' Compensation Commission Appeal No. 93855, decided November 9, 1993. In the present case the hearing officer found that the medical treatment for the compensable injury was a cause of the claimant's strokes and therefore the strokes were part of the compensable injury. This factual determination was supported by medical evidence. While there was contrary medical evidence, it was clearly the province of the hearing officer to resolve the conflicts in the evidence. Applying the standard of review set out above, we find no error in the hearing officer's determination that the claimant's compensable injury extended to and included strokes suffered after August 7, 2002.

The decision and order of the hearing officer are affirmed.

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

HIGHLANDS INSURANCE GROUP
CHARLIE MILLER
10370 RICHMOND AVENUE
HOUSTON, TEXAS 77042.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Michael B. McShane
Appeals Panel
Manager/Judge

_____
Robert W. Potts
Appeals Judge