APPEAL NO. 041082
FILED JUNE 30, 2004

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 April 6, 2004. The hearing officer resolved the disputed issues by deciding that the compensable injury on _____, does not include disc bulges and protrusions at L4-5 and L5-S1; that the appellant/cross-respondent (claimant) only had disability beginning on April 23 and continuing through October 9, 2001, and at no other times; and that the employer did not tender a bona fide offer of employment (BFOE) to the claimant. Both the claimant and the respondent/cross-appellant (carrier) appealed. The appeal file does not contain a response from either the claimant or the carrier to the other's appeal.

DECISION

Affirmed.

We first address the claimant's assertion that the hearing officer erred by failing to add the issue of carrier waiver. The claimant asserted that the issue had been discussed at the benefit review conference (BRC) but was not included in the BRC report. Applying Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7 (Rule 142.7), the hearing officer found that the claimant did not timely request addition of the issue and denied the claimant's request. We cannot conclude that the hearing officer abused his discretion in denying the motion to add the issue. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. The claimant had the burden to prove the extent of her compensable injury. 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). Applying this standard, we find there was sufficient evidence in the record to support the hearing officer's extent-of-injury finding. We find no merit to the claimant's contention that the hearing officer "appeared to raise the 'sole cause' defense for the carrier." The hearing officer noted that the claimant's physicians released her to work in October 2001, and that the video in evidence showing her physical abilities around that time mitigates against a continuation of her 2001 problems.

As far as the BFOE is concerned, the carrier argues that the evidence in the record demonstrates that the employer did tender a bona fide offer of light duty to the claimant, and that the claimant rejected that offer. The hearing officer found that the employer's offer was not a BFOE because it failed to meet the requirements of Rule 129.6. The hearing officer noted that the letter did not comply because it failed to state the location at which the claimant would be working, failed to give the schedule the claimant would be working, failed to state the wages to be paid, failed to provide a description of the physical and time requirements of the position offered, and failed to provide a statement that the employer would only assign tasks consistent with the employee's physical abilities, knowledge, and skills and would provide training if necessary. Additionally, the letter failed to include a written copy of the Work Status Report (TWCC-73) upon which it was based. We conclude that the hearing officer's determination that the employer did not tender a BFOE to the claimant 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, *supra*.

*S*ection 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Although there is conflicting evidence on the disability issue, we conclude that there is sufficient evidence to support the determination that the claimant only had disability beginning on April 23 and continuing through October 9, 2001, and at no other times. The hearing officer's disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

We affirm the decision and order of the hearing officer.

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

LEE F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Robert W. Potts
Appeals Judge