APPEAL NO. 93530

This request for review comes to us following our reversal and remand in Texas Workers' Compensation Commission Appeal No. 93182, decided April 26, 1993. In that case, we reversed the decision of the hearing officer and remanded for "further consideration, not inconsistent with (that opinion), and development of evidence as deemed necessary and appropriate by the hearing officer." Our concern with the hearing officer's Decision and Order involved what we termed an apparent inadvertent oversight of an item of evidence which expressed the medical opinion that the appellant's (claimant) current back complaints were, in reasonable medical probability, related to a reported ankle injury some four and a half months earlier. After initially scheduling a hearing on remand, the hearing officer determined that a hearing was not necessary since there was sufficient evidence of record, including the medical evidence in question, for him to further consider his decision and to arrive at a new Decision and Order. After doing so, he determined once again that the claimant's current back complaints are not related to the earlier ankle injury and that the claimant has not sustained disability related to such injury. Claimant urges error in several matters, some of which were disposed of on the earlier request for review, the thrust of which centers around his not being represented or assisted in his case, the hearing officer's not conducting another hearing and further developing the evidence and considering new evidence upon remand, and in the hearing officer's weighing of the evidence. The respondent (carrier) argues that there is sufficient evidence to support the hearing officer's decision, that he was not required to consider or develop new evidence or to hold a rehearing upon the remand and that claimant was provided abundant opportunity to obtain representation or assistance.

DECISION

The decision of the hearing officer on remand is affirmed.

The pertinent evidence in this case is set out in considerable detail in the hearing officer's Decision and Order and is summarized in our previous decision in this case. Appeal No. 93182, *supra*. A further recitation of the evidence is not necessary and we adopt the previous summaries of the evidence for purposes of this appeal. As we remarked in that decision regarding representation or assistance for the claimant, "[r]epeated and complete advice [including a continuance] was detailed by the hearing officer, which we commend, and we can only conclude the claimant made an informed choice to forego assistance or representation at the hearing." We also note that the hearing officer at the original hearing assisted the claimant in organizing his exhibits, gave him the opportunity, which he took, of withdrawing several exhibits that were not particularly helpful to his position, and gave him every opportunity to introduce any matter he desired. We do not, under the circumstances, find merit to this later assertion of inadequate assistance or representation.

Claimant faults the hearing officer in his determination not to conduct a hearing or gather additional evidence on the ordered remand urging this "is an error by the Hearing

Officer as he was supposed to develop the record completely." He states he was going to bring a form (Initial Medical Report, TWCC-61) from a (Dr. P) to the hearing but was not given a chance. He has attached a copy of that TWCC-61 to what appears to be his response to the carrier's response. While we have held that we do not consider new evidence on appeal (Texas Workers' Compensation Commission Appeal No. 92201, decided June 29, 1992), under the particular circumstances that this decision on remand reaches us, we have reviewed the TWCC-61 signed by Dr. P and do not find any reasonable likelihood that it would have affected the decision in the case. (Dr. P's TWCC-61 rendered some four and a half months after the claimed ankle injury indicates that the claimant complained he twisted his back while other evidence, including statements attributed to the claimant and others, including medical evidence, indicated that claimant only sustained an injury to his ankle. Also, Dr. P's TWCC-61 mentions "speaks Spanish" and claimant surmises that there was an interpretation problem). In any event, the report does not provide any linkage between a back problem and the ankle injury, the pertinent matter on remand. As indicated above, we determined that the hearing officer apparently inadvertently overlooked a significant item of evidence in setting forth the evidence and his findings in the original Decision and Order. This was a report, which was in conflict with other medical and nonexpert evidence, rendered by a (Dr. L) indicating a probable linkage between the claimant's ankle injury and his several months later claimed back condition. The hearing officer took this report into consideration on remand and determined that other medical evidence contrary thereto was more reliable. After fully reviewing the original hearing, our appeals decision in that case, and the matters submitted by the claimant and carrier, we are satisfied that the hearing officer complied sufficiently with the mandates of the remand. Contrary to the position urged by the claimant, the remand did not direct a rehearing or that the hearing officer "develop the record completely." Rather, the case was remanded "for further consideration, not inconsistent with this opinion, and development of evidence as deemed necessary and appropriate by the hearing officer." His consideration of all the evidence of record, together with his proper consideration of Dr. L's report, if he deemed that was the relevant and material evidence that was necessary for him to make an informed decision (Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art 8308-6.34(b) (Vernon Supp. 1993) (1989 Act) Article 8308-6.34(b)), met the mandates of the remand. And, we find that there was sufficient evidence of record to support his determinations.

The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Article 8308-6.34(e). His opinion indicates he apparently did not give a great deal of weight or credibility to the claimant's testimony and was more persuaded by the detailed medical report contrary to that submitted by Dr. L. in arriving at his decision. There was other evidence set out in his Decision and Order that tended to corroborate his conclusion that any back condition in late Date was unrelated to an ankle injury of date, and that the claimant did not sustain any disability as a result of the ankle injury. As the fact finder, the hearing officer resolves

conflicts and inconsistencies in the testimony and other evidence. Burelsmith v. Liberty Mutual Insurance Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo, 1978, no writ). As with other evidence, he also resolves conflicts in expert or medical evidence. Texas Employer's Insurance Association v. Campos, 666 S.W.2d. 286 (Tex. App.-Houston [14th Dist] 1984, no writ). Only were we to determine, which we do not, that the hearing officer's findings and conclusions were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would there be a sound basis to disturb his decision. *See* Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

The decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge