APPEAL NO. 93623

This appeal is brought pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 7, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding. The sole issue at the CCH was whether or not the appellant (claimant herein) sustained an injury to his back in the course and scope of his employment on (date of injury). The hearing officer concluded that the claimant was not injured in the course and scope of his employment. The claimant appeals requesting review of the decision of the hearing officer. The respondent (carrier herein) replies contending that the claimant fails to state grounds for an appeal and arguing that the decision of the hearing officer was supported by the evidence adduced at the hearing.

DECISION

Finding no reversible error in the record and sufficient evidence to support the decision of the hearing officer, we affirm.

It was undisputed that the claimant had worked for the employer as an apartment complex maintenance man for approximately five years. The claimant testified that on (date of injury), he exchanged a faulty refrigerator in a tenant's apartment with one from the office. He testified that he was injured while returning the faulty refrigerator to the office. He described the injury as taking place when the he was wheeling the refrigerator, which was strapped to a dolly, and the wheels of the dolly dropped into a crack in the sidewalk causing the load to shift forward. The claimant states that he injured his back when he attempted to prevent the load from shifting forward.

During the exchange of the refrigerators the claimant testified that he was accompanied by a tenant. The tenant stated that he saw the load shift, but did not notice that the claimant was injured or hear the claimant remark that he had hurt his back as the claimant insisted that he did. The claimant contended that the tenant was an unreliable witness as he suffered from "mental problems."

The claimant testified that he reported his injury to the assistant manager of the apartment complex in her office a few minutes after it happened, but the assistant manager testified that when she went to the laundry room of the apartment complex she found the claimant there talking to a female tenant and the claimant asked to go home because he had injured his back. The assistant manager testified that she told the claimant that he could not go home, but needed to go to the doctor if he was injured. The assistant manager and the manager of the apartment complex testified that later that day, when the manager arrived at the apartments and was informed by the assistant manager of the incident, they both went looking for the claimant, but were unable to find him.

The manager and the assistant manager testified that the claimant had been a good employee until a dispute arose over his pay rate. The manager testified that about six

months before the alleged injury that the claimant had been dissatisfied with the pay raise he had received. According to her, and the assistant manager, problems subsequently arose with the claimant refusing to take service calls on evenings and weekends, failing to do his work, calling in sick regularly on Mondays, and leaving early. The assistant manager testified that she repeatedly warned the claimant that this behavior could result in the manager firing him, but stated that the claimant told her, "Let them fire me. I got something planned."

The claimant testified that he had been an unusually loyal employee, arriving at work early, preparing breakfast at his own expense for his supervisors to show his appreciation, and working overtime. He denied any personnel problems prior to his injury.

As to the sufficiency of an appeal, we have repeatedly held that no particular form of appeal is required and that an appeal, even though terse or inartfully worded, will be considered. *See*, e.g., Texas Workers' Compensation Commission Appeal No. 93040, decided March 1, 1993, and cases cited therein. In cases where the grounds of appeal are unclear, we have inferred that the appellant's complaint is based on the sufficiency of the evidence to support the findings of fact and conclusions of law of the hearing officer. Texas Workers' Compensation Commission Appeal No. 92292, decided August 17, 1992; Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. In fact, the re-argument of the testimony presented at the CCH in claimant's request for review indicates that this is the thrust of his appeal. However, we cannot, as claimant requests, independently investigate the facts of this case to determine who is telling the truth. Our review is limited to consideration of the record developed at the contested case hearing, the written request for appeal, and the response thereto. TEX. LAB. CODE ANN. § 410.203(a).

The question of whether an injury is sustained within the course and scope of employment is one of fact. Texas Workers' Compensation Commission Appeal No. 92373, decided September 10, 1992; Texas Employers' Insurance Association v. Anderson, 125 S.W. 2d 674 (Tex. Civ. App.-Dallas 1939, writ ref'd). 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 the above standard of appellate review to the present case, we cannot overturn the decision of the hearing officer. This case turns on the credibility of the witnesses and the sorting out of contradictory testimony. The findings of the hearing officer are not against the great weight and preponderance of the evidence.

We, therefore, affirm the decision of the hearing officer.

____
Gary L. Kilgore
Appeals Judge

CONCUR:

____
Susan M. Kelley
Appeals Judge

____
Philip F. O'Neill
Appeals Judge