APPEAL NO. 93929

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001, *et seq*. (1989 Act) (formerly V.A.C.S., Article 8308-1.01, *et seq*.). On September 20, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The issues in dispute were: "1. Whether Claimant was injured in the course and scope of his employment on (date of injury), and 2. Whether Claimant has suffered any disability as the result of a compensable injury on (date of injury)."

The hearing officer determined that the appellant, claimant herein, failed to establish that he was injured in the course and scope of his employment on (date of injury), and consequently suffered no disability. Claimant contends that his attorney failed to follow "the guidelines of the Texas Workman's (sic) Compensation . . . Act," failed to show certain unspecified records and requests that we order medical payments and lost time due to this accident. Respondent, carrier herein, did not file a response.

DECISION

The decision of the hearing officer is affirmed.

The claimant's appeal, as noted above, is based principally on competency of counsel in that claimant alleges that his attorney did not follow certain "guidelines" of the Texas Workers' Compensation Commission (Commission) and failed to show certain records which claimant alleges would show proof of his injury and inability to work. Claimant, however, does not provide any information as to the "guidelines" he alleges his attorney did not follow, or the records (evidence) that the attorney failed to offer or how that information would have changed the outcome of the case. Clearly claimant's appeal is not based on "newly discovered evidence" because by claimant's own appeal, the evidence (records) was available at the CCH but claimant only disputes that his attorney failed to follow certain guidelines or apparently offer the complained of evidence. *See* Jackson v. Van Winkle, 660 S.W.2d 807, 809 (Tex.. 1983) and Texas Workers' Compensation Commission Appeal No. 92124, decided May 11, 1992, as to what constitutes newly discovered evidence.

As a general matter this appellate body does not normally review competency of a properly licensed attorney. There are other forums for determining issues of this nature in civil actions. Although we can only speculate what guidelines claimant believes were not followed and what records or evidence was not offered which would show claimant was injured in the course and scope of his employment, we do note that one medical report was not admitted for failure to exchange as required by Section 410.161 of the 1989 Act (previously Article 8308-6.33(e)). However, we also note that two other reports from the same doctor, covering much of the material, being the extent of claimant's injury, were admitted into evidence. In that the hearing officer found that claimant did not injure his back when he nearly fell off a scaffold on (date of injury), the medical report regarding the extent of the injury does not affect the issue that claimant was injured in the work-related incident

of (date of injury) and appears to be cumulative to the other medical reports from the same doctor.

We further note the sequence of events found by the hearing officer, which were that claimant was badly frightened when he almost fell from a scaffold on (date of injury), that claimant did not claim an injury at the time and the employer treated the event as a safety incident, that claimant reported for work the next day (March , that claimant declined a short-notice job on March 6th because he had been drinking, that claimant was hospitalized for about a week with a kidney problem beginning March that claimant had not complained of a back injury to the employer when claimant was visited in the hospital and that claimant only asserted a work-related back injury after the employer had refused to assist claimant in the payment of his kidney-related hospital bills. The hearing officer specifically found claimant had not injured his back in the scaffold incident on (date of injury).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or so against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). Allegations of competency of counsel in that claimant's attorney failed to prove claimant's injury does not warrant, in this case, a reversal of the hearing officer's decision. The fact that claimant was not successful in the prosecution of his claim does not warrant our re-examination of the attorney's tactics and acts of judgment in presenting the case. *See* Cook v. Irion, 409 S.W.2d 475 (Tex. Civ. App.-San Antonio 1966, no writ).

Accordingly, the hearing officer's decision is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge