APPEAL NUMBER 94974
FILED SEPTEMBER 2, 1994

At a contested case hearing held in (City A), Texas, on June 22, 1994, the hearing officer took evidence on the sole disputed issue, namely, whether the appellant (claimant) sustained a compensable injury in the course and scope of his employment on _____. The hearing officer subsequently made certain factual findings and concluded that the claimant did not sustain a compensable injury. Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 410.202(a) (1989 Act), claimant has appealed the hearing officer's decision challenging the sufficiency of the evidence to support it. The response filed by the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Claimant testified that at the time of his claimed injury he was a vice-president for customer relations with the (employer) in (City A), Texas. He said that while employed with employer, he made five or six business trips a year to cities in Mexico to call on various account holders and promote new business for employer. He further testified that a long-time family friend, Mr. LE, who was blind, lived in (City B), a suburb of (City C), Mexico, and had an account with employer. Claimant said that Mr. LE's bank account statements were mailed to claimant's home address in City A and that he would take them to Mr. LE when he traveled to City C on business and could be available to read them to Mr. LE. Claimant stated that on Sunday afternoon, _____, he commenced a business trip to Mexico and was driven to City C in a vehicle owned by employer and driven by a chauffeur whose payment was arranged for by employer. According to claimant, they arrived in City C at about 7:30 p.m., checked into a hotel, and thereafter drove to City B. Claimant testified that the purpose of the trip to City B was to deliver a bank statement to Mr. LE at the liquor store operated by his father. He said that when he and the driver arrived at the liquor store, only an attendant was present so he and the driver drove to claimant's uncle's house nearby so he could see his mother who lived with him in City A but who was then visiting his sick uncle. They stayed there about an hour, then drove back to the liquor store where claimant said he dropped off the bank statement. He said they then ate dinner at a cafe across the street and at about 10:00 p.m. were driving back to City B when they were involved in a collision with a bus. Claimant did not testify to the nature of his injuries. He offered medical records from the Department of Veterans Affairs (VA) indicating he was first seen on November 4, 1993, for complaints of neck and hand pain for one month due to a motor vehicle accident. The diagnosis was cervical radiculopathy. An x-ray report showed that claimant, then age 50, had early hypertrophic degenerative changes of the cervical spine. Mr. JJ, the first vice-president of employer, testified that when employer mailed statements to account holders, as distinguished from having the statements held at the bank for pick up, employer's responsibility for such statements ended upon their being placed in the mail, absent some error. He also stated that employer had no practice of hand delivering statements to

customers whose statements were to be mailed rather than held at the bank for pick up. He said he would regard the hand delivery of a statement to a customer in Mexico whose account had a mailing address, such as that described by the claimant for Mr. LE, as the doing of a personal favor for the account holder. He said he had not authorized claimant to hand deliver Mr. LE's statements although he could not say it was a prohibited practice. He also acknowledged that if a customer asked an official already planning a trip to Mexico to bring along a statement, the employer would comply. He thought it extremely unusual for a customer's bank statements to be delivered to an employee's house and said the case of Mr. LE was the only one of which he was aware.

Ms. PG, employer's vice-president for human relations, testified that in November 1993, claimant came to her and discussed the filing of a workers' compensation claim, mentioning receiving medical care at a VA hospital and needing an MRI. According to Ms. PG, claimant told her he had gone to City B on a business trip with the driver, had then gone to take his mother some money, and that while returning to City B was involved in an accident. She said claimant never mentioned any specific bank business, or the delivering of bank statements, or going to see Mr. LE, and that when she interviewed the driver during her investigation of the claim, he, too, told her he and claimant had gone to see claimant's mother and never mentioned taking a bank statement to a liquor store. Claimant mentioned that he was subsequently dismissed from his employment but was employed by another bank. An unsigned statement of Ms. GF, a manager of one of employer's branch banks, indicated that claimant mentioned having had the accident but being "fine," later mentioning having neck pain, and still later mentioning that he did not think his VA benefits would cover an MRI.

Claimant introduced a statement from Mr. LE stating that on _____, claimant had delivered account statements "to us at our home." The carrier pointed out claimant's evidentiary conflict on the delivery point, namely, the liquor store and the home, and also invited the hearing officer's attention to the marked difference in the signatures of Mr. LE on his bank signature card and on the statement. The hearing officer found, among other things, that at the time of the incident claimant was returning from having visited his mother in City C, and that he was not then in the furtherance of his employer's business. The hearing officer further found that claimant sustained no damage or injury to the physical structure of his body as a result of the automobile accident. The hearing officer concluded that claimant did not sustain a compensable injury on _____.

Claimant had the burden to prove he sustained a compensable injury and the issue presented the hearing officer, as the fact finder, with a question of fact to resolve. This case came down to the credibility of the claimant and the evidence he introduced. Determining the credibility of the witnesses and weight to be given all the evidence is the province of the hearing officer as its sole judge. Section 410.165(a). It is for the hearing officer to resolve conflicts and inconsistencies in the testimony and the evidence. Garza v.

Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Burelsmith v. Liberty Mutual Insurance Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). The hearing officer may believe one witness and disbelieve another, and can believe all, part, or none of the testimony of any given witness. Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.); Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); McGalliard v. Kuhlmann, 722 S.W.2d 694 (Tex. 1986). Claimant's testimony only raises an issue of fact. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). The hearing officer could credit the testimony of Ms. PG to the effect that in discussing the accident with her neither claimant nor the driver mentioned the delivery of a bank statement to Mr. LE. The hearing officer could further consider the discrepancy in claimant's evidence as to whether such delivery was made to the liquor store or the house and could note the purported signatures of Mr. LE on his bank signature card and on the statement about the delivery. Respecting the no injury finding, the hearing officer could credit claimant's statement to Ms. GF that he was feeling "fine" and his not seeking medical attention for his neck until November 4, 1993. The challenged findings and conclusions are not so against the great weight and preponderance of the evidence as to be manifestly unjust.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge