APPEAL NO. 980126

A contested case hearing (CCH) was originally held in (City 1), on September 5, 1995, under the provisions of the Texas Workers' Compensation Act, TEX. LAB CODE ANN. §' 401.001 *et seq*. (1989 Act), with hearing officer. In Texas Workers' Compensation Commission Appeal No. 961231, decided August 7, 1996, the Appeals Panel reversed the finding of fact that good cause existed to hold the CCH in City 1 and the conclusion of law that venue was proper in City 1 and remanded for the hearing officer to make findings of fact on which to make a determination of whether good cause existed to hold the CCH in City 1 and remanded for the hearing officer to make findings of fact and a conclusion of law consistent with Appeal No. 961231. To decide all issues before it, the Appeals Panel affirmed the determinations of the hearing officer that the claimant sustained a compensable injury on _____, and that he had disability from _____, through the date of the CCH, September 5, 1995, conditioned on a final determination by the Texas Workers' Compensation Commission (Commission) that venue in City 1 was proper. The hearing officer held another hearing on October 16, 1996; a copy of the decision in Appeal No. 961231 was admitted, no additional evidence was offered, and both parties presented closing statements. The hearing officer rendered another decision that indicates that it was signed on December 9, 1996; the decision was distributed by a letter dated January 12, 1998; and the record does not contain an explanation for the delay. The carrier appealed, attaching a copy of its previous request for review. The claimant responded, attaching a copy of his previous response.

DECISION

The evidence, including that related to venue, is in Appeal No. 961231, *supra*, and will not be repeated in this decision. In the Decision and Order rendered after the CCH held on September 5, 1995, the hearing officer made the following finding of fact and conclusion of law concerning venue:

FINDING OF FACT

2. Good cause exists to hold this hearing in the [City 1] Field Office of the [Commission].

CONCLUSION OF LAW

1. [Commission] had jurisdiction to hear this case, and venue was proper in [City 1], Texas.

In the Decision and Order that was distributed on January 12, 1998, the hearing officer made the following findings of fact and conclusions of law concerning venue:

FINDINGS OF FACT

2. On or about _____, claimant resided in (City 2.

3. On or about _____, Claimant was injured in the course and scope of employment.

4. . On _____, Claimant began receiving medical treatment for the injury sustained on _____ or thereabout from (Dr. A) in [City 1].

5. Since _____, Claimant has lived with his sister in [City 1], and continued to receive medical treatment on a regular basis from [Dr. A], also in [City 1].

6. A benefit review conference (BRC) was held in the [City 1] Field Office of the [Commission] on June 28, 1995 to mediate and attempt to resolve the issues of compensability, disability and average weekly wage.

7. Following the June 28, 1995 [BRC], the benefit review officer issued a [BRC] report certifying compensability, disability and average weekly wage as the unresolved issues to be resolved at the [CCH].

8. Following the June 28, 1995 [BRC] and subsequent to the issuance of the [BRC] Report Carrier requested that the issue of venue be added to the statement of disputes. The issue of venue was added at the [CCH].

CONCLUSIONS OF LAW

2. Good cause exists to held the hearing in the [City 1] Field Office of the [Commission].

3. Venue is proper in the [City 1] Field Office of the [Commission].

The hearing officer made additional findings of fact as requested by the Appeals Panel in Appeal No. 961231, *supra*. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo

1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. That a different determination on a finding of fact could have been made based upon the same evidence is not a sufficient basis to overturn that finding of fact. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. The hearing officer's findings of fact set forth earlier are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We affirm those findings of fact.

Section 410.005(a) provides:

> Unless the commission determines that good cause exists for the selection of a different location, a [BRC] or a [CCH] may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury. [Emphasis added.]

In Texas Workers' Compensation Commission Appeal No. 960053, decided February 9, 1996, the hearing officer did not seek a stipulation concerning venue. The Appeals Panel stated that to avoid confusion on venue, a stipulation should be sought at every CCH and that that was particularly crucial in a case where the claimant had moved since being injured and may live closer to a different Commission filed office than the one closest to her or his residence at the time of the injury. The carrier argues that holding the CCH in City 1 is inconvenient for the carrier, the employer, and witnesses because of the great distance from City 2 where the injury occurred to City 1 where the CCH was held. But Section 410.005(a) uses "claimant''s residence at the time of the injury" and not "place where the injury occurred". The commentary on venue in 1 JOHN T. MONTFORD, *ET AL.*, A GUIDE TO TEXAS WORKERS' COMP REFORM (1991) on page 6-71 and 6-72 contains a hypothetical of a claimant residing within 75 miles of a field office and being injured more than 75 miles from the field office. The commentary states "[h]ow far the place of injury is from the employee-claimant's residence and/or the [Commission's] nearest office makes no difference in terms of venue." In another hypothetical on page 6-72, the commentary states that if a worker is killed within 75 miles of a field office and the only legal beneficial lives less than 75 miles from a field office that is a considerable distance from the field office where the decedent resided at the time of the injury, venue would be in the field office within 75 miles of the residence of the beneficiary. It appears that the intent of Section 410.005(a) is to place venue at a field office within 75 miles of the residence of the claimant for the convenience of the claimant and not of others. In Texas Workers' Compensation Commission Appeal No. 93092, decided March 18, 1993, the Appeals Panel reversed and remanded for another reason and stated that it did not find error by the hearing officer in finding that good cause existed for holding the CCH in the field office where the claimant had processed his entire claim. In the case before us, the hearing officer did not err in concluding that good cause existed to hold the hearing in the City 1 Field Office and that venue was proper in the City 1 Field Office.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge