APPEAL NO. 980248
FILED MARCH 25, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 21, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were injury and disability. The hearing officer determined that the appellant (claimant herein) did not suffer a compensable injury on _____, and consequently, that the claimant did not have disability. The claimant appeals contending the hearing officer's finding of no injury was contrary to the evidence and asking that we reverse the hearing officer's injury finding and remand the case for the hearing officer to resolve the disability issue. The respondent (carrier herein) replies that the claimant's request for review is inadequate as a matter of law to constitute an appeal and that the hearing officer's decision was sufficiently supported by the evidence.

DECISION

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

We first address the carrier's argument that the claimant's request for review was inadequate as a matter of law because it goes to our jurisdiction to review this case. The carrier argues that the claimant's request for review does not clearly and concisely rebut the decision of the hearing officer on each issue on which review is sought and cites our decision in Texas Workers' Compensation Appeal No. 951079, decided August 16, 1995. The carrier also argues that we should apply a more stringent standard in judging whether or not a pleading is adequate when a party is represented by counsel, as here, than when unrepresented. The carrier further argues that there were four Findings of Fact and four Conclusions of Law in the hearing officer's decision and asserts that it is impossible to determine from the claimant's request for review which is being challenged.

We note that first of all that the entire appeal hinges on the issue of injury since the hearing officer's resolution of the disability issue hinges on this issue. The appeal clearly recognizes this and recites in detail the evidence regarding the injury issue that the claimant argues is contrary to the finding of the hearing officer of no injury. The claimant asks that we reverse the hearing officer's determination that the claimant did not suffer a compensable injury and remand for the hearing officer to resolve the disability issue. The claimant's request is quite clear and concise. It, in fact, cogently argues for the relief sought and, quite frankly, if we were to accept the carrier's argument that it is inadequate as a matter a law, we would be constrained to likewise find the majority of pleadings filed by attorneys for both claimants and carriers similarly

inadequate. In the present case, our jurisdiction has clearly been invoked, and we will review the merits of the appeal.

The hearing officer summarizes the evidence in his decision and we adopt his rendition of the evidence. We will only touch on the facts of this case germane to the appeal. These include testimony from the claimant that he sustained a compensable injury as a result a lightening strike on _____.[1] At the time of the alleged injury the claimant and two coworkers were in ditch working on a section of pipe. It was raining and there was water in the ditch. The claimant testified that he was knocked off the pipe by the force of the impact of electricity, which he attributed to lightening from the storm. The claimant's testimony is somewhat substantiated by statements of his coworkers, but the evidence of an actual lightening strike is circumstantial and conflicting. The claimant and his coworkers were examined for injury and initially there were found to have no injuries. Claimant later sought additional treatment and eventually Dr. P became the claimant's treating doctor. The hearing officer quotes the following language from Dr. P's August 26, 1997, report:

> I find it rather interesting to see that [the claimant] received some type of "shock" when his co-workers did not and I simply cannot explain the science, the physics, or anything else of this. It is conceivable that [the claimant] in the circumstances of the event may have made a mountain out of a molehill.

[1]We note that the quality of the tape recording of the hearing was quite poor with the sound fading and returning in a rhythmic pattern, making the recording difficult, but not impossible, to understand.

Dr. P also states as follows in a report of September 15, 1997: [2]

> An event occurred. *It is possible that we are seeing a subconscious problem mediated deep in this patient's psyche and that he is convinced he was electrocuted even though he wasn't.* This is not malingering. This is just as real an injury as if he was struck by 20,000 volts. Malingering is a crime. Being psyched out or manifesting "hysterical conversion neurosis" should this truly be what the problem is, is not a crime because it's real to the patient. In truth, we may have to go investigate this aspect of the situation, i.e., is there a "psyche-out."

The hearing officer's Findings of Fact and Conclusions of Law include the following:

FINDINGS OF FACT

2. On _____ an unexplained event occurred at the Claimant's work site possibly in connection with an electrical storm.

3. The _____ event did not cause a harm to Claimant's body and did not result in an injury.

4. Unrelated to the claimant's injury, Claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage beginning May 22, 1997 and continuing through the date of this hearing.

CONCLUSIONS OF LAW

3. Claimant did not sustain a compensable injury on _____.

4. Claimant did not have disability.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. 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

[2]We have italicized that portion of this language quoted by the hearing officer in his decision.

Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, 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).

A finding of injury may be based upon the testimony of the claimant alone. Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In the present case the hearing officer found no injury contrary to the testimony of the claimant. The medical evidence was conflicting as to injury. Claimant had the burden to prove he was injured in the course and scope of his employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden. This is so even though, were we fact finders, we might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

Finally, with no compensable injury found, there is no loss upon which to find disability. By definition disability depends upon a compensable injury. *See* Section 401.011 (16).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge