APPEAL NO. 990551

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) on remand was held on February 8, 1999. In Texas Workers' Compensation Commission Appeal No. 982570, decided December 17, 1998, the Appeals Panel determined that the case had been resolved on an incorrect theory and provision of the statute and remanded the case for further consideration and findings of fact on the issue of whether the appellant (claimant) at the time of his injury was directed by a person with authority to perform the particular activity and whether the activity was routinely given to persons in claimant's position and in the course and scope of the employment. Following a hearing on remand, the hearing officer determined that the claimant was not acting under the direction of any employee with authority at the time of the injury and that the injury was not sustained while the claimant was in the course and scope of employment. The claimant appeals several findings of fact, arguing that the evidence shows that he was directed to perform the activity at the time of injury by a person who was an acting supervisor, and that he was in the course and scope of his employment as the activity was a routine part of the tasks given to drivers. The respondent (carrier) urges that there is sufficient evidence to support the findings and conclusions of the hearing officer and points out that the claimant's position is essentially asking that conflicting evidence be resolved different from the inferences and findings found supported and most reasonable by the hearing officer.

DECISION

Affirmed.

The facts are generally set forth in our prior decision, Appeal No. 982570, *supra*, and will not be repeated here except as related to the issues on remand. Succinctly, the claimant sustained a burn injury when a cup of hot coffee that he went to get for another employee spilled in the truck he was driving. He had testified that he was directed to get the coffee by another driver, CA, who was left in charge. CA testified at the initial CCH that he was not in charge or a supervisor and that he did not direct the claimant to get coffee for an employee. At the hearing on remand, the claimant introduced no further evidence; however, the carrier called an additional witness. The general manager of the employer, AM, testified that CA, who was just a driver like the claimant, was not a supervisor on the date of the injury, that it was not common for the employer or managers to designate one of the drivers to be in charge, that it was not common for drivers to go get coffee for an employee, that on occasion the managers would have a driver stop and get coffee and donuts or tacos for the staff of employees, and that on occasion the drivers might be told to do some personal errand for the manager but that the assistant manager did not have that authority.

In her decision on remand, the hearing officer made appropriate findings on the issues on remand and correctly applied the law. She determined that the claimant's injury was not incurred in the course and scope of his employment and thus the claimant did not

sustain a compensable injury and did not have disability. While there was a degree of conflict in the evidence with the claimant testifying that CA was "in charge," that CA directed him to perform the activity of getting coffee for the employee, and that it was a routine duty and in the course and scope of employment for drivers to get coffee and food for employees, there was evidence completely contrary to the claimant's version, including the testimony of AM at the hearing on remand. It is for the hearing officer to resolve conflicts in the evidence and testimony. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In resolving such conflict, the hearing officer determines the weight and credibility to be given the testimony and evidence. Section 410.165(a). The testimony of any given witness may be believed in whole, in part, or not at all by the hearing officer. McGalliard v. Kuhlmann, 722 S.W.2d 694 (Tex. 1986). And, a claimant's testimony only raises an issue of fact and does not have to be accepted at face value. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). Here, there clearly was evidence to support the factual determinations that the claimant was not directed by anyone in authority to perform the obtaining of coffee for an employee leading to his injury or that his obtaining the coffee was an activity in the course and scope of his employment. From our review of the evidence and the matters on remand, we cannot conclude that the findings, conclusions, and decision of the hearing officer were against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Dorian E. Ramirez
Appeals Judge