APPEAL NO. 990953

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case is back before us after our remand in Texas Workers' Compensation Commission Appeal No. 982969, decided February 2, 1999. We had remanded the case for the hearing officer to make findings as to whether the attorney time claimed by the appellant (attorney) was actually expended. A contested case hearing (CCH) on remand was held on March 5, 1999. The hearing officer made findings concerning the amount of attorney time expended and concluded that attorney's fees in the amount of $412.50 are reasonable and necessary for the work performed. The attorney appeals, urging that the decision of the hearing officer is not supported by the evidence and that the Texas Workers' Compensation Commission (Commission) abused its discretion by not naming both attorneys involved in rendering legal services as respondents to the CCH. The attorney asks the Appeals Panel to reverse and remand. The file contains no response from the respondent, (claimant), or the respondent, (carrier).

DECISION

Finding 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.

Both the attorney and the claimant testified. The attorney testified that his law firm represented the claimant in her workers' compensation claim. According to his testimony, much of the work was performed by another attorney who worked for his law firm at the time but was no longer with the firm and who was unable to appear at the CCH. The attorney testified that the services for which fees were requested and had been approved were performed and resulted in the claimant receiving benefits. The attorney contended that as a result of the efforts of his firm, the claimant started to receive weekly benefits and medical benefits.

The claimant testified that she felt that fees were not justified because the attorney only represented her for a short period of time. She testified that she believed she could have obtained benefits herself. She testified that she received temporary income benefits in the amount of $469.00 per week for a period of eight months and that she had not yet received an impairment rating, which she understood might entitle her to further income benefits.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. We also generally limit our review to the matters raised in the appeal.

The attorney argues on appeal that the Commission should have made the attorney who is no longer in his office a party to this matter. This argument is raised for the first time on appeal and we will not consider it for that reason. We do observe, however, that it is his office who is pursuing fees, and it is not incumbent on the Commission to make every person who worked on the claimant's file a party to his firm's claim for fees.

Section 410.165(a) provides that the 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 Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, 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).

The hearing officer made explicit factual findings as to the amount of attorney and paralegal time expended in the claimant's case. The attorney contends these findings are not supported by the evidence. However, applying the standard of review of factual findings stated above, we do not find sound grounds to set aside these factual findings. These factual findings provide a basis for the hearing officer's decision, so we also find no abuse of discretion. We also note that we do not have the authority to grant the relief that the attorney seeks–remand of this case–because, under Section 410.203(c), we are only allowed to remand a case once.

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Alan C. Ernst
Appeals Judge