

## APPEAL NO. 991251

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 7, 1999, a contested case hearing (CCH) was held. With respect to the issue before him the hearing officer determined that there was not good cause to relieve the appellant (claimant) from the effects of a benefit review conference (BRC) agreement signed on October 31, 1996. The claimant files a request for review, arguing that there was not an accurate diagnosis of his condition at the time he entered into the BRC agreement and he should therefore be relieved of the effects of the agreement. The respondent (carrier) replies that the hearing officer resolved the factual dispute concerning whether the claimant had good cause to be relieved of the BRC agreement and that we should affirm his decision. The carrier also requests that we correct clerical errors in the decision of the hearing officer.

### DECISION

We reform the decision of the hearing officer to correct clerical errors. 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 as reformed.

The hearing officer summarized the evidence in his decision and we adopt his rendition of the evidence. We will only briefly touch on the evidence germane to the appeal. It was undisputed that the claimant suffered a compensable injury on \_\_\_\_\_. A dispute arose between the carrier and the claimant concerning whether the claimant suffered an injury, the extent of any injury suffered by the claimant, the amount of the average weekly wage, disability and whether or not the any injury was timely reported. These issues were resolved in a BRC agreement between the parties on October 31, 1996. In regard to the extent of injury the agreement stated as follows:

Claimant's injury extends only to the thoracic spine. Claimant's injury does not extend to the cervical spine ribs or shoulders.

After hearing the testimony of the claimant and reviewing the documentary evidence, the hearing officer made findings of fact and conclusions of law and issued a decision which included the following findings of fact and conclusion of law:

### FINDINGS OF FACT

6. The parties entered into a [BRC] Agreement on October 31, 1998.
7. There was an accurate diagnosis before the [BRC] Agreement was signed.
8. Claimant had all the facts concerning his injury before he signed the [BRC] Agreement.

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10. There was not a substantial change in condition after the signing of the [BRC] Agreement.
11. The Claimant's condition was adequately diagnosed before the Agreement was signed.
12. There is no fraud or mutual mistake associated with the [BRC] Agreement.
13. There is no good cause to relieve the Claimant from the effects of the [BRC] Agreement signed on October 31, 1996.

### **CONCLUSION OF LAW**

3. The [BRC] Agreement signed on October 31, 1996, is binding on all Parties.

First, we note that the carrier requests we correct clerical errors in the decision of the hearing officer. Specifically, the carrier points out that Finding of Fact No. 6 states the date of the BRC Agreement was October 31, 1998, when the record clearly shows it was October 31, 1996. We reform Finding of Fact No. 6 to reflect this. The carrier also argues that the hearing officer failed to list Carrier's Exhibits I and J which were admitted into evidence. We reform the hearing officer's decision to reflect the admission of these exhibits.

The thrust of the claimant's appeal is that he was not accurately diagnosed with lumbar disc herniations prior to entering into the BRC agreement. He argues that since he was unaware of this, he should be relieved of the effect of the BRC agreement. As the hearing officer points out in his decision, the medical evidence is not conclusive concerning whether or not the claimant actually has herniated lumbar discs as opposed to bulging discs. In any case, the claimant was aware, according to his own testimony, that he might have lumbar problems when he entered into the BRC agreement. Further, the hearing officer is not bound to accept at face value the testimony of the claimant concerning the facts on which he bases his contention that good cause exists to relieve him from the effects of the BRC agreement.

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). 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).

We find sufficient evidence to support the decision of the hearing officer. We note that there were additional findings concerning the amount of time that passed before the claimant challenged the agreement. The hearing officer and the parties discussed various aspects of waiver, estoppel and laches. We note that, as the carrier recognizes in its appeal, the decision of the hearing officer may be affirmed upon any reasonable theory supported by the evidence. See Daylin, Inc. v. Juarez, 766 S.W.2d 347, 352 (Tex. App.-El Paso 1989, writ denied). The lack of good cause to relieve the claimant from the BRC agreement was the issue at the CCH and there was sufficient evidence to support the hearing officer's finding that there was no good cause.

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge