APPEAL NO. 001488
FILED AUGUST 11, 2000

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held in _____ (City 1), Texas, on June 7, 2000, with _____ presiding as hearing officer. She determined that good cause did not exist for changing venue to the _____ (City 2) field office; that the respondent (claimant) sustained damage or harm to his wrists as the result of repetitive use of his hands in the course and scope of his employment; that the date of the repetitive trauma injury is _____; that the claimant timely reported the injury to the employer on _____; and that he had disability beginning on _____, and continuing through the date of the CCH. The appellant (carrier) requested review, contended that the hearing officer erred in determining that venue in City 1 was proper, urged that the other determinations of the hearing officer are against the great weight of the evidence; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor. In the alternative, the carrier requested that the Appeals Panel reverse the decision of the hearing officer and remand for a CCH to be held in City 2. The claimant responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

We first address the determination that venue was proper in City 1. As stated by the carrier, the hearing officer made findings of fact that the benefit review conference (BRC) was held in City 1 and that good cause did not exist for changing venue to City 2. The audiotape of the CCH indicates that after making statements related to those two findings of fact, the hearing officer did state that she found good cause to hold the CCH in City 1. Section 410.005(a) provides:

> Unless the commission determines 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. 980126, decided February 26, 1998, the Appeals Panel included the quote from Section 410.005(a); quoted and paraphrased from 1 JOHN T. MONTFORD, *ET AL.*, A GUIDE TO TEXAS WORKERS' COMP REFORM (1991), and stated that the intent of Section 410.005(a) is to place venue at a field office within 75 miles of the residence for the convenience of the claimant and not of others. The hearing officer did not err in stating that good cause existed to hold the CCH in City 1.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary of the evidence will be included in this decision. The claimant testified at the CCH. The owner of the employer and two other employees of the employer in supervisory positions testified from City 2 with the use of telephones. The employer is an electrical contractor. The claimant worked there for about three months as an electrician's apprentice. The evidence is conflicting on the amount of repetitive work the claimant did and on whether he told the employer that the problems he had with his wrists were work related. Medical records indicate that the claimant has a subscapular ganglion cyst and tendinitis on the right; that he probably has tendinitis and mild carpal tunnel on the left; that his tendinitis is most likely secondary to his occupation; that he was placed on light duty on January 16, 2000; and that he was to avoid certain repetitive motions. The claimant said that after he could no longer do the electrical work he briefly worked for three other employers at lower hourly wages and for fewer hours per week.

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). Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. 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, determines the weight to assign to evidence, and resolves conflicts and inconsistencies in the evidence. 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. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could 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). Only were we to conclude, which we do not in this case, that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Gary L. Kilgore
Appeals Judge