APPEAL NO. 002148

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 May 11, 2000. The issues at the CCH were whether the appellant (claimant) sustained an injury on _____, and had disability due to that injury. The Appeals Panel remanded the case for further consideration of the evidence in Texas Workers' Compensation Commission Appeal No. 001330, decided July 21, 2000, out of concern that the hearing officer had misread a medical record and that the misreading was critical to the decision.

The hearing officer determined the remand on the existing record. The hearing officer stated that the medical record was not critical to the decision but that there were a number of inconsistencies in the record which caused less credibility to be given to the testimony of the claimant.

The claimant appeals, and argues that the hearing officer has bias against him or his counsel which led the hearing officer, on remand, to discount the previously critical medical report as another "inconsistency," when the misread report was plainly not inconsistent. The claimant argues that he should have been given another hearing on remand. The claimant further argues that the hearing officer declined to consider aggravation. The respondent (carrier) responds by stating evidence in support of the decision and arguing that the hearing officer is the one who ascertains credibility.

DECISION

We affirm the hearing officer's decision.

The facts in our previous decision are incorporated by reference.

First of all, a hearing on remand is not necessarily required where there is no new evidence that would appear necessary to develop (as opposed to reconsideration of an existing record). *See* Texas Workers' Compensation Commission Appeal No. 980502, decided April 15, 1998; Texas Workers' Compensation Commission Appeal No. 93570, decided August 24, 1993. The decision to hold a new hearing on remand is within the discretion of the hearing officer. We note that our basis for remanding was so that a record already in evidence could be correctly interpreted. We cannot agree that the hearing officer abused her discretion in not holding another hearing. We note that there was no contention made at the end of the first hearing that additional evidence should be presented at a future hearing (no request to keep the record open, for example).

While we would agree that the December 16, 1999, hospital report cannot be correctly characterized as another "inconsistency" in the record, we cannot read the decision as indicative of the hearing officer refusing to consider the December 16 report at all. Rather, the hearing officer's discussion appears to discuss why the December 16 report was not the critical factor in the previous decision. We have frequently stated that

the fact that different inferences could be drawn from the evidence will not in and of itself cause the Appeals Panel to set aside the decision of the hearing officer.

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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). Personal observation of the demeanor of witnesses is an advantage that the hearing officer has over the Appeals Panel in weighing testimonial evidence. The hearing officer was also evidently persuaded that the timing of seeking medical assistance for the purported injury providently coincided with a routine layoff the day or two before. We cannot agree that the record is indicative of bias or animus against the claimant simply because the remand decision went against the position of the claimant.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). In this case, although different inferences could be drawn depending upon evidence thought to be credible, we cannot agree that the record mandates a reversal of the decision. We affirm the decision and order on remand.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge