

APPEAL NO. 002322

Following a contested case hearing (CCH) held on August 22, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the appellant/cross-respondent (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appealed, asserting that the hearing officer's decision is against the great weight of the evidence. The respondent/cross-appellant (carrier) responded that the decision is supported by the evidence and should be affirmed. The carrier appealed the hearing officer's failure to grant its motion to remove Ms. R as the claimant's representative on the grounds that Ms. R's representation of the claimant violated Section 410.006 of the 1989 Act. The claimant responds that the hearing officer did not err.

DECISION

Affirmed.

The claimant asserted that he had sustained an injury in the course and scope of his employment for (employer) when an eight-foot long 2 x 2 he was using to break apart concrete forms kicked back on him, causing an injury to his left arm and low back. The claimant sought medical treatment through (the clinic) and requested that the clinic provide him with assistance in front of the Texas Workers' Compensation Commission (Commission). The clinic assigned Ms. R to assist the claimant and she appeared before the Commission on behalf of the claimant at both the benefit review conference and the CCH in this matter. The carrier objected to Ms. R's representing the claimant at the CCH. That objection was overruled by the hearing officer and, in its request for review, the carrier requests that the Appeals Panel review the matter, although it acknowledges that it was neither prejudiced nor harmed by Ms. R's representation of the claimant.

At the hearing Ms. R testified that she was a salaried employee of the clinic and that an agreement between the clinic and the claimant specifically provided that the claimant would not be responsible for any fee for her services. Situations such as this have been addressed by the Appeals Panel in the past and we have determined that hearing officers have not abused their discretion in allowing assistance of this type for claimants. See Texas Workers' Compensation Commission Appeal No. 951693, decided November 22, 1995; Texas Workers' Compensation Commission Appeal No. 961135, decided July 29, 1996; and Texas Workers' Compensation Commission Appeal No. 961385, decided August 28, 1996. Under the reasoning set forth in those decisions, we find that the hearing officer did not abuse his discretion in allowing Ms. R to continue to represent the claimant in the case at hand.

In his request for review, the claimant asserts that the hearing officer erred in that the hearing officer did not afford the claimant's testimony and medical evidence the weight and credibility that the claimant believes that it deserves. The claimant asserts that the

hearing officer placed too much emphasis on the facts that the job was of short duration, that there were discrepancies in the evidence regarding when and to whom the alleged injury was reported, and the fact that there appeared to be several dates on which the injury was reported to have taken place. The claimant also asserts by reference that the hearing officer erred by not specifically holding that he did not find the claimant to be credible or that he found the carrier's witnesses to be more credible than the claimant. The claimant further urges that the medical evidence presented supports his testimony and should have been believed by the hearing officer.

The carrier presented evidence from witnesses which tended to contradict certain elements of the claimant's testimony. The claimant asserts that he was aware that a layoff was planned, but was assured that his job was not in danger. The carrier presented evidence that the claimant was told that he would be laid off on the date that he reported the claimed injury. The claimant testified that he reported the injury on _____, to his immediate supervisor. The supervisor testified and denied that he had been advised of the claimed injury until March 2, 2000, the day of the layoff and after the claimant had been told by the foreman that he was to be laid off. The claimant testified that he was in such pain that he left early in the afternoon of March 2, 2000, a payday, before getting his paycheck. The employer's safety man, the person responsible for handing out the paychecks, testified that he had seen the claimant near the end of the shift and had personally delivered the claimant's paycheck to him. The safety man also made a note, dated March 10, 2000, that he had given the claimant his paycheck at approximately 3:30 p.m. on March 2, 2000. While the inconsistencies are small, the hearing officer could well find that the claimant was not a credible witness and choose to disbelieve all of the claimant's testimony regarding the claimed injury. 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.

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). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. 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. Taylor, supra; Appeal No. 93426, supra. 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 judgment 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 were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

After a review of the evidence presented at the hearing, both testimonial and documentary, we find that there is adequate support in the record for the hearing officer's decision. We find no error in the hearing officer's failure to make specific findings on the relative credibility of the witnesses since it is incumbent upon the hearing officer to assess the credibility of the witnesses before him. Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The decision and order of the hearing officer are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge