APPEAL NO. 002730

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 October 5, and October 30, 2000. With regard to the issues before him, the hearing officer determined that the appellant's (claimant) compensable injury does not extend to either ankle, that the claimant is entitled to supplemental income benefits (SIBs) for the first and second quarters and is not entitled to SIBs for the third through the eighth quarters, and that the respondent (carrier) is relieved of liability for the second quarter (as well as other quarters) because of the claimant's failure to timely file an application. The hearing officer's decision on the various SIBs issues has not been appealed and has become final pursuant to Section 410.169.

The claimant appealed the extent-of-injury issue, asserting that he had mentioned his ankle complaints "to nearly every doctor I've been to," stressing that Dr. C, in history and clarifications, established that the claimant had sustained an injury to his ankles in the _____, compensable injury and that the hearing officer erred in finding that current medical reports were "calculated to create an injury in retrospect." The claimant also complains that the ombudsman had failed to properly "represent" him at the CCH. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The carrier responds, urging affirmance.

DECISION

Affirmed.

The vast majority of the CCH dealt with the SIBs issue and will not be further addressed. At the start of the first hearing, the hearing officer commented that at a prehearing conference, the "limited amount of time" the claimant had spent with the ombudsman had been discussed, that the claimant had had more than 15 minutes with the ombudsman and had asked the claimant whether he wished to proceed to which the claimant said "Let's go forward with it." We would also note that the same ombudsman assisted the claimant at the second session of the CCH, some 25 days later. Our review of the record indicates that the ombudsman's assistance was appropriate.

The parties stipulated that the claimant sustained a compensable injury on _____, when he fell some 14 or 15 feet off a scaffold. The claimant asserted injuries to his low back, neck, and left wrist, as well as to his ankles in the fall. The medical records establish that the claimant had a fracture of his left ankle in 1981.

A handwritten Initial Medical Report (TWCC-61) of May 13, 1993, among other things, noted "heels OK, ankles hurt." A December 15, 1994, report by Dr. C references low back pain with "lower extremity radiculopathy" but no mention of ankles. (It is undisputed that the great majority of the claimant's treatment was for the low back, neck, and left wrist.) Other back complaints include a "shooting pain . . . into his left foot." The

claimant answered an interrogatory in February 1996, describing his injury as "compressed fracture in L1 vertebrae, neck injury, wrist injury, groin injury, chipped teeth, hurt ankles, pain in hips."

The first definitive documented complaint of "moderate to severe pain in both of his ankles" is in a report dated October 20, 1998. Subsequent reports document "foot and ankle problems." In a report dated September 7, 1999, Dr. C writes "[the claimant] asked if I would document that he had foot and ankle problems at the time of his initial evaluation." The claimant contends that he has complained of ankle problems all along but that the doctors were treating his neck and low back. The hearing officer, in his Statement of the Evidence, remarks that "the documentation since that time [since 1998] seems calculated to create an injury in retrospect." The hearing officer also commented that the arthritis in the claimant's left ankle "is more likely to have resulted from [the 1981] traumatic injury, rather than this one which did not even have a diagnosis of an ankle sprain, much less a fracture." The hearing officer found the "causative link" between the compensable 1993 injury and the claimant's current complaints "too weak."

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 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 (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 (Tex. App.-Houston [14th Dist.] 1984, no writ).

We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance 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 Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150

Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Philip F. O'Neill
Appeals Judge