APPEAL NO. 002733

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 August 25, 2000. The hearing officer held that the appellant's (claimant) neck injury and depression were not causally related to his compensable shoulder injury.

The claimant has appealed, arguing that the hearing officer did not timely issue his decision; that he abused his discretion in not grating a continuance; and that the decision is against the great weight and preponderance of the evidence as to the relationship of his conditions to his injury. The respondent (carrier) responds that the actions and decisions of the hearing officer are affirmable.

DECISION

The decision is sufficiently supported and we affirm.

Essentially, the claimant's case may be summarized as such: he worked for the same employer for 25 years as a deliveryman, with no prior problems involving counseling or treatment for depression. On _____, as some product began to fall, he caught it and felt a "snapping rubber band" sensation in his shoulder. The claimant was diagnosed with a torn rotator cuff for which he had two surgeries in 1998, and another in 1999. He said that he was unable to work and could not even dress himself without assistance. The claimant's psychologist, Mr. C, testified that although the claimant (who was 51 years old) had stressors related to the murder of his son, his wife's cancer, and the need to care for grandchildren, it was the fact of the injury and his inability to continue providing for his family that initiated his depression. Mr. C said that the claimant's pain medication could also be causing some depression.

The claimant said that he initially thought the pain in his neck radiated from his shoulder and this is what he was also told by the first doctor who treated him. When he changed his treating doctor to Dr. P in December 1999, his neck was looked at more closely and an MRI showed various bulges at three cervical levels.

The hearing officer's decision has summarized the medical records in evidence. The claimant's cervical problem has been essentially diagnosed as degenerative.

The reasons given by the hearing officer for filing a late decision are similar to those encountered in other cases which may, or may not, result in similar delay. The evidence is more voluminous than the typical case. We need not delve into the validity of the reasons recited for delay; however, because the deadline is not mandatory, Texas Workers' Compensation Commission Appeal No. 92456, decided October 8, 1992, the remedy for a "late" filed opinion under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(c) (Rule 142.16(c)) is not to set aside the opinion. Texas Workers' Compensation Commission Appeal No. 950400, decided May 3, 1995.

Second, we do not agree that there was an abuse of discretion in not granting a continuance. Due to the disruption to the entire docket as a whole, the granting of continuances is to be done sparingly.

Although the claimant argues that the reasons why repetitive trauma to his neck could have occurred from his numerous years on the job, the issue before the hearing officer was whether the cervical problems were caused or aggravated by the events that caused injury to his shoulder. We cannot agree that the hearing officer's decision is in error in drawing inferences that the discrete injury claimed did not cause or exacerbate the neck problems.

The hearing officer's finding of fact on depression has a typographical error and it is clear that he found that the claimant did not show that his injury extended to depression. On this holding, different inferences could have been drawn from the evidence; the fact that one has other stressors does not compel a decision against a person who argues, and has support in his treatment records for, a midlife physical injury and resulting unemployment being the "straw that breaks the camel's back." It also appears that the hearing officer was unfamiliar with the discipline of "educational psychology" or that psychologists may be doctors of education, as was the primary treating psychologist, Dr. R, a perception that was touched upon, but not directly countered, by Mr. C when concern about this was voiced by the hearing officer during the CCH. It is ultimately the responsibility of the parties to educate the hearing officer in areas that common experience may not address. It also appears that the hearing officer was influenced by the statement in Dr. R's most recent treatment record that the claimant's anxiety did not meet clear independent diagnostic criteria. The fact that one trier of fact may give more weight than another might to similar evidence does not, in and of itself, compel a reversal. 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). We will not substitute our opinion for the hearing officer's findings which have support in the record and accordingly affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge