

APPEAL NO. 010064

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 002335, decided November 10, 2000, the Appeals Panel reversed the decision of the hearing officer and remanded for reconstruction of the record. On December 12, 2000, a hearing on remand was held with hearing officer presiding. He determined that the respondent (claimant) had sustained a compensable injury in the course and scope of his employment on _____, and had disability from _____, through the date of the initial hearing on September 7, 2000. The appellant (carrier) appealed, asserting that the hearing officer's decision is against the great weight of the evidence. The carrier further requests that the hearing officer's decision be clarified to reflect that the period of disability addressed by the hearing officer did not include any period of alleged disability occurring after the initial hearing.

DECISION

We affirm the hearing officer's decision as reformed.

In its appeal, the carrier asserts that the claimant was not credible, that the hearing officer acknowledged the claimant's lack of credibility, and that the hearing officer's finding of an injury in the course and scope of employment was based upon medical records which lacked any credibility in that the opinions of the doctors were predicated on unreliable information from the claimant. The carrier asserts that the claimant did not sustain an injury in the course and scope of his employment and did not, therefore, have disability as defined by the 1989 Act.

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). The trier of fact may believe all, part, or none of any witness's testimony. 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). 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). The hearing officer could believe parts of the claimant's testimony while rejecting others. He did so and determined that the objective medical evidence supported the mechanism of injury and the claimant's alleged period of disability. 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).

During the hearing on remand, the hearing officer expressly noted that no additional evidence was considered and that the issues before him would be decided based upon the evidence and circumstances as they existed at the time of the initial hearing. We agree with the carrier that the hearing officer did not intend to make any finding of fact or conclusion of law regarding any period of disability that may or may not have occurred after September 7, 2000. The hearing officer's determination that the claimant had disability from _____, through September 7, 2000, is not against the great weight of the evidence and we will reform the hearing officer's conclusion of law in that matter to conform to the clear intent of the hearing officer. The hearing officer also made a conclusion of law that the claimant sustained an injury in the course and scope of employment on _____. The issue, as presented and determined by the hearing officer was whether the claimant had sustained a compensable injury on _____. We also reform the conclusion of law regarding compensability to conform to the issue presented. As reformed, the hearing officer's conclusions of law will read as follows:

3. The claimant sustained a compensable injury on _____.
4. The claimant had disability from _____, up to and continuing through September 7, 2000, as a result of the compensable injury of _____.

The hearing officer's decision and order, as reformed, are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge