APPEAL NO. 011073
FILED JUNE 26, 2001

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 4, 2001. The hearing officer resolved the disputed issues of whether the appellant (claimant) sustained a compensable injury on or about _____, and whether the claimant had disability resulting from the claimed injury, adversely to the claimant. The claimant appealed on sufficiency grounds; asserted partiality of the hearing officer; requested the Appeals Panel to take judicial notice of facts not in evidence at the CCH; and, requested de novo review, or in the alternate, a remand. The respondent (carrier) responded, urging affirmance. The issue of whether the carrier waived the right to dispute compensability of the alleged injury was not appealed and has become final (Section 410.169).

DECISION

The hearing officer's decision is affirmed.

On appeal, the claimant, through his attorney, requests we take judicial notice of the number of adverse rulings he has received from this hearing officer, presumably to support his assertion that the hearing officer was not acting impartially. We note that we generally will not consider evidence that was not submitted into the record, and which is raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it was cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We conclude that the evidence offered by the claimant does not meet the requirements of newly discovered evidence necessary to warrant a remand, nor are they the sort of facts which are judicially cognizable or generally recognizable within the Texas Workers' Compensation Commission's specialized knowledge. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.2(11) (Rule 142.2(11)). We further note that a thorough review of the transcript of the CCH in this case did not reveal any indication of hearing officer bias towards the claimant's attorney. The transcript reflects highly professional and civil conduct by all of the parties and we discern no evidence at all from this record to support the allegations of partiality on the part of the hearing officer.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury and, therefore, did not have disability. There was conflicting evidence in this case. There was evidence from which the hearing officer's could conclude that there was no new or additional damage or harm to the physical structure of the claimant's body

as a result of work activities. 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). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, 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). The hearing officer's determinations are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge