APPEAL NO. 011399
FILED AUGUST 1, 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 April 24, 2001. The hearing officer held that the respondent (claimant) sustained a compensable low back injury on _____, and had disability therefrom for the period following November 14, 2000, through the date of the CCH.

The appellant (carrier) has appealed, arguing that the claimant was off work and experienced pain due to a gynecological condition. The carrier also argues that the hearing officer violated the time requirements set out in the rules of the Texas Workers' Compensation Commission for filing decisions. The carrier contends that the hearing officer erred in failing to grant its motion for continuance. The claimant responds that the record supports the hearing officer's decision.

DECISION

We affirm.

Injury and Disability

The hearing officer did not err in finding that the claimant sustained a compensable injury and had disability from this injury. The claimant said she felt her back pop as she lifted a tray of auto parts on _____ The claimant worked a brief course of light duty. The facts were complicated somewhat by the fact that also around this time, the claimant was undergoing further analysis of the cause of pelvic pain. After further testing by her doctors, she underwent a hysterectomy on October 23, 2000. Her surgeon for this operation told her she would be able to return to work from this operation on December 4, 2000.

The claimant changed treating doctors for her back injury to a chiropractor on November 14, 2000. He scheduled her for an MRI, which revealed two herniated lumbar discs. The doctor has kept her off work monthly since that time. The claimant testified that she believed she could return to a light-duty form of work but not doing what she had done before. She stated that up until November 14, 2000, her lost time would have been due to her hysterectomy alone, but thereafter her back became a reason in her inability to work.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd

n.r.e.). 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). A compensable injury need not be the sole cause of disability, although it must be a producing cause to support a determination that disability has resulted. Texas Workers' Compensation Commission Appeal No. 91029, decided October 25, 1991.

Time For Filing Decisions

We cannot agree that the case should be remanded with instruction to the hearing officer to refile her decision on a timely basis, which is the relief sought by the carrier. Nor do we agree that the decision is void for failure to file a decision within the time frames set out in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(c) (Rule 142.16(c)). We have held that the time lines set out in Rule 142.16(c) are directory, not mandatory. Texas Workers' Compensation Commission Appeal No. 941729, decided February 10, 1995; Texas Workers' Compensation Commission Appeal No. 950151, decided March 15, 1995.

Denial of Motion for Continuance

The carrier subpoenaed a witness, making such request on April 12, 2001, less than two weeks prior to the CCH. When there was a problem getting the subpoena served before the CCH, a motion for continuance was made at the CCH. The witness was an employee of the insured employer. As the claimant pointed out, there had been a three- month delay in the CCH following the benefit review conference in requesting the witness' presence. The carrier's attorney stated at the hearing that some of the delay resulted from a difficulty in communication between the insured employer and the carrier. We cannot agree that the hearing officer abused her discretion by refusing to grant a continuance under these circumstances. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company

v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge