

APPEAL NO. 011724  
FILED SEPTEMBER 11, 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 initially held on September 21, 2000. In Texas Workers' Compensation Commission Appeal No. 002442, decided December 1, 2000, the Appeals Panel held that the hearing officer had erred in excluding exhibits which had allegedly been exchanged at a benefit review conference (BRC) because they had not been exchanged after the BRC. Appeal No. 002442 affirmed the hearing officer's decision on an election of remedies issue and remanded the case for the hearing officer to determine if, in fact, the challenged exhibits had been exchanged at the BRC as alleged, and if they had, the hearing officer was to consider those records in reaching a decision on injury and disability.

A CCH was rescheduled for January 29, 2001, but the carrier failed to appear. The hearing officer sent the carrier a 10-day "show cause" letter and it was subsequently determined that the carrier had been given an incorrect February 2001 date of the remand hearing. The hearing officer determined that the carrier had good cause for its failure to appear and the remand hearing was rescheduled for May 25, 2001.

At the remand hearing on May 25, 2001, the carrier's attorney testified that he had personally exchanged the exhibits in issue with the claimant, the ombudsman, and the benefit review officer. The claimant testified that he had not seen or received the exhibits in issue. The hearing officer commented that although the claimant appeared credible, the hearing officer "admits into evidence" the challenged exhibits.

On the merits, the hearing officer determined that the claimant sustained a compensable injury on \_\_\_\_\_, and that the claimant had disability "from April 24, 2000 continuing to the date of the hearing." The hearing officer also made determinations on the election of remedies issue which had previously been resolved in Appeal No. 002442, *supra*, and will not be addressed further.

The carrier appeals several of the hearing officer's factual determinations and conclusions of law and pointed out inconsistencies and contradictions in the claimant's evidence. The file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

The background facts are set out in Appeal No. 002442 and will not be repeated here. The claimant asserted that he sustained a compensable left ankle injury climbing down a ladder. The carrier argues that the claimant had a preexisting ankle injury and had been treating for that injury prior to the ladder ankle twisting injury. The carrier contends that the claimant had not met his burden of proof pointing to contradictory medical reports and inconsistencies in the claimant's testimony. The carrier asserts that the claimant's testimony was not credible.

As we noted in Appeal No. 002442, this case rests largely on the credibility of the claimant's testimony and as we have frequently noted, the hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The hearing officer resolved the contradictions and inconsistencies in the claimant's favor. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Regarding the issue of disability, the hearing officer's determinations are generally supported by the evidence. We do note that the carrier's argument that the hearing officer's finding of disability "to the date of the hearing . . . is ambiguous . . ." has some merit in that there have been three hearings on this issue. We reform the hearing officer's decision to read that the claimant had disability continuing to the date of the September 21, 2000, hearing.

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

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Robert W. Potts  
Appeals Judge