

APPEAL NO. 012052  
FILED OCTOBER 4, 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 August 2, 2001. The hearing officer determined that the appellant/cross-respondent (claimant) did not sustain a compensable injury on \_\_\_\_\_, did not have disability; and is not barred from receiving workers' compensation benefits because of an election to receive benefits under a group health insurance policy. The respondent/cross-appellant (carrier) submitted a conditional appeal which requested review of Finding of Fact Nos. 3 and 4 and Conclusion of Law No. 5, if the claimant files a timely appeal. The claimant has done so. The carrier also responded to the claimant's appeal, urging affirmance of the hearing officer's determinations that the claimant did not sustain a compensable injury and that there is no disability. The claimant did not respond to the carrier's appeal.

DECISION

Affirmed, as reformed.

There is an obvious typographical error in Finding of Fact No. 2, and we reform the date of \_\_\_\_\_, set forth in that finding to \_\_\_\_\_.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury and that she did not have disability. 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). An appellate-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. Upon review of the record submitted, we find no reversible error. The hearing officer clearly found that the claimant's version of a work-related incident on \_\_\_\_\_, was not credible. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them to be so in this case.

The hearing officer did not err in determining that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under a group health insurance policy. Under Bocanegra v. Aetna Life Insurance

Company, 605 S.W.2d 848 (Tex. 1980), any election of remedies which is held to bar a claimant from seeking an alternative relief must be made as a result of (1) an informed choice, (2) between two rights, remedies, or states of fact that (3) are so inconsistent (4) as to constitute manifest injustice. An election should be imposed sparingly, reserved for instances where the “assertion of a remedy, right, or state of facts is so unconscionable, dishonest, contrary to fair dealing, or so stultifies the legal process or trifles with justice or the courts as to be manifestly unjust.” *Id.* at 851. See Texas Workers’ Compensation Commission Appeal No. 990022, decided February 19, 1999. The hearing officer reviewed the evidence presented to her at the CCH and determined that the carrier had not met its burden to prove that the claimant made an informed choice to receive benefits under her group health insurance policy as opposed to workers’ compensation benefits. We find that the hearing officer correctly determined this issue.

We affirm the decision and order of the hearing officer, as reformed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750  
COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge