

APPEAL NO. 012533
FILED DECEMBER 6, 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 was held on September 26, 2001. He determined that the respondent (claimant) sustained a compensable injury on _____, from which he had disability; that the appellant (carrier) was not relieved of liability for the failure of the claimant to notify his employer of his injury; and that he did not make an election of remedies when he filed his medical treatment initially through his health insurance rather than workers' compensation.

The carrier appeals all determinations against it. The claimant has not responded.

DECISION

We affirm the hearing officer's decision.

The claimant, an auto mechanic, was injured as he lifted a tire from a machine in the course of balancing the tire. He said that, on the day of the injury, he was asked by several workers, including his supervisor, what had happened, and that he reported the incident to them at that time. Nevertheless, he continued to work through pain until he was unable to do so, and sought medical treatment at that point. The claimant said that he was instructed to use his regular health insurance by the head of the company because it was disbelieved that he hurt himself at work. The reason for the disbelief was that the claimant had complained about back pain prior to _____. The claimant said these were ordinary aches and pains, and nothing in intensity that he experienced after the tire-lifting incident. The claimant's supervisor denied being told of a work-related injury on _____. He said that none of the other mechanics, including two identified by the claimant as witnesses, knew of an injury at work.

INJURY, DISABILITY, AND NOTICE

The hearing officer did not err in holding that the claimant sustained a compensable injury on _____, gave timely notice of the injury, and had disability. Essentially, the carrier disputes the weight given by the hearing officer to the evidence. A claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). 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). 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). The hearing officer's resolution of the conflicting evidence is not without support in the record nor is it so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust.

ELECTION OF REMEDIES

The hearing officer did not err in holding that the claimant had not made an informed election of remedies by filing his medical treatment initially under his regular health insurance. The arguments raised by the carrier have been addressed before in Texas Workers' Compensation Commission Appeal No. 001471, decided August 7, 2000.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

CONCURRING OPINION:

I write separately to disassociate myself from the case cited by the majority, Appeal No. 001471. See my dissent in TWCA No. 002763, decided January 11, 2001.

Philip F. O'Neill
Appeals Judge