APPEAL NO. 013149
FILED FEBRUARY 4, 2002

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 begun on June 5, 2001. Evidence was taken from the respondent (carrier) at that hearing; the appellant (claimant) did not attend. A 10-day letter was sent to the claimant by the Texas Workers' Compensation Commission (Commission), to which the claimant did not respond. Another CCH was scheduled for July 10, 2001. The claimant, by letter dated July 9, 2001, instructed the Ombudsman not to attend the CCH scheduled for July 10, 2001, on his behalf. The claimant did not attend the CCH and a second 10-day letter was sent to the claimant. By letter dated July 18, 2001, the claimant purported to explain his absence from the CCH. The hearing officer reopened the hearing and scheduled another CCH. The claimant did attend and present evidence at the CCH which was concluded on November 7, 2001. The hearing officer determined that the claimant did not have good cause for failure to attend either of the properly scheduled CCHs.

With respect to the issues, the hearing officer resolved the disputed issues by determining that the date of the claimant's alleged injury is _____; that the claimant did not sustain a compensable injury in the form of an occupational disease; that the claimant did not timely report the alleged injury to his employer; and that the claimant had no disability from a compensable injury. The claimant appealed the hearing officer's determinations on evidentiary sufficiency grounds and the carrier responded, urging affirmance.

DECISION

Affirmed.

In determining whether there was an abuse of discretion by the hearing officer in making his decision concerning good cause for the claimant's failure to attend the scheduled hearings, we look to see if the hearing officer acted without reference to any guiding rules or principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We do not find any abuse of discretion on the part of the hearing officer in determining that there was no good cause shown for the claimant's failure to appear at the June 5, 2001, or July 10, 2001, hearings. Further, the claimant was permitted to present his evidence at the subsequent hearing, so we discern no prejudice to the claimant from the hearing officer's determination of no good cause for failing to attend the first two scheduled hearings.

The claimant attaches new evidence to his appeal. We will not generally consider evidence not submitted into the record, and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992.

At the hearing the claimant offered evidence that he had sustained an injury to his wrists while carrying totes; that he reported the alleged injury to his supervisor; and that he

has not been able to work because of the injury. The carrier presented evidence that the claimant had complained of wrist pain as early as _____; that the claimant had no work-related injury or disability; and that this was a spite claim in light of the evidence that demonstrated the claimant had exhibited a strong dislike for his employer.

The hearing officer made findings of fact and concluded that the claimant did not sustain a compensable injury in the form of an occupational disease. He also concluded that the claimant knew or should have known on _____, that his alleged injury was work related, that the claimant did not timely report an injury to his employer, and that there was no good cause for his failure to do so. The claimant had the burden to prove that he was injured in the course and scope of his employment, and that he made a timely report of injury. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Appeal No. 950084, decided February 28, 1995. A fact finder is not bound by the testimony (or evidence) of a medical witness where the credibility of that testimony (or evidence) is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). 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. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084, *supra*. We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier**, and the name and address of its registered agent for service of process is

MR. MARVIN KELLEY
EXECUTIVE DIRECTOR
T.P.C.I.G.A.
9120 BURNET RD. STREET
AUSTIN, TEXAS 78758.

Michael B. McShane
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge