APPEAL NO. 020235
FILED FEBRUARY 28, 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 held on January 8, 2002. The hearing officer resolved the disputed issues before her by determining that the appellant's (claimant) _____, compensable injury does not include cerebral atrophy, infarct right anterior cerebral artery, subcortial infarct right middle cerebral artery, and cerebellar infarct, and that the claimant had no disability from December 6, 2000, through the date of the hearing. The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision and order are affirmed.

The claimant testified that on _____, he was injured when an 80-pound box fell on his head rendering him unconscious. The claimant further testified that he has had headaches, neck pain, and dizziness ever since the accident. The claimant first sought medical treatment for his head injury on _____, from Dr. C. At issue in this case is whether the claimant's compensable head trauma injury includes cerebral atrophy, infarct right anterior cerebral artery, subcortial infarct right middle cerebral artery, cerebellar infarct, and whether the claimant has disability beyond December 5, 2000. Conflicting medical evidence was presented on both issues. On appeal, the claimant asserts procedural error and alleges that the hearing officer did not properly consider all of the evidence.

We first address the claimant's allegations of procedural error. The claimant asserts that, "[the] court process did not allow for the less formal (casual) first meeting." This assertion is without merit as the hearing file contains evidence that a benefit review conference was held on August 13, 2001 (closed August 28, 2001), and the issue is being raised for the first time on appeal. The claimant next asserts that other cases were scheduled on the same date as his CCH, causing time conflicts and creating pressure to "hurry up" his case and that he was not provided the opportunity to counter false statements made by the carrier. Nothing in our review of the record indicates that the hearing officer hurried either party or prevented the claimant from presenting rebuttal evidence. Finally, the claimant argues that his attorney was unaware that Dr. C would be available to testify by phone and therefore he was unprepared to counter his testimony; that the claimant was not given the opportunity to review his case prior to the hearing; and, that he needs an opportunity to review the transcript to provide line by line comments. The claimant had the burden of proof on the disputed issues. It was his responsibility to be prepared to go forward at the hearing. At no time during the hearing did the claimant request a continuance. The claimant's attorney did initially object to the testimony of Dr. C, but the carrier produced evidence that the claimant's attorney's office received notice that Dr. C would be testifying by certified letter dated October 18, 2001. Finally, if the

claimant wanted to review a copy of the hearing transcript, it was his obligation to obtain a copy.

We next turn to the claimant's assertion that the hearing officer did not properly consider all of the evidence. As stated earlier, there was conflicting evidence presented on the issues of injury and disability. The claimant testified as to the mechanism of the injury and the effects he has suffered. Additionally, the claimant submitted medical reports from two doctors which support his position on the extent-of-injury and disability issues. The carrier submitted medical evidence from two doctors which support the position that the claimant's current medical condition and inability to obtain and retain employment at wages equivalent to his preinjury wage from December 6, 2000, through the date of the hearing was not the result of the compensable injury. 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). Nothing in our review of the record indicates that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge