APPEAL NO. 022227
FILED OCTOBER 16, 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 August 12, 2002. The hearing officer determined that the respondent's (claimant) head and cervical spine injury extends to include a closed head injury; that the claimant was entitled to change treating doctors; and that the claimant had disability from July 30, 2001, and continuing through the date of the CCH. The appellant (carrier) appeals the determinations on the disputed issues referring to the report of a Texas Workers' Compensation Commission (Commission) required medical examination (RME) doctor and asserts that the claimant had sought to change treating doctors to avoid being released to return to work. The claimant responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that on _____, the claimant, a roofing crew foreman, sustained a compensable injury when he fell about 12 feet from a collapsing scaffold striking his head on a beam. In dispute is the seriousness of the claimant's injury and whether it included a closed head injury. The claimant was taken to a hospital and began treating with Dr. H, a physician who had treated him prior to the _____ injury. On August 10, 2001, Dr. H indicated that he was going to release the claimant to return to work. The claimant then sought to change treating doctors giving as his reason that Dr. H had not referred him for diagnostic tests and that he was "getting worse." The claimant's request was approved on August 28, 2001. The Commission by order dated March 5, 2002, appointed Dr. P as an RME doctor to comment on the extent of the claimant's injury and whether the compensable injury extends to and includes "a closed head injury, traumatic brain disorder." Dr. P submitted a detailed report and another hearing officer asked for clarification and again asked the doctor to answer the specific questions posed to him. Dr. P replied that the claimant had sustained a head injury but it was unclear if the claimant had a "traumatic brain disorder/injury" indicating reasons why it was "unlikely." Dr. P stated the compensable injury does include a "conversion disorder." The claimant references two other reports as well as Dr. P's report. The carrier cites portions of Dr. P's report which indicated symptom exaggeration and the absence of objective findings to fully explain the claimant's condition.

The medical evidence was conflicting and even Dr. P's report was not conclusive. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. As the fact finder the hearing officer has the responsibility to resolve the conflicts and inconsistencies in the evidence and he did so in the claimant's favor. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-

Houston [14th Dist.] 1984, 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).

Regarding the change of treating doctor issue we review that matter on an abuse-of-discretion standard. There is an abuse of discretion when a decision maker reaches a decision without reference to guiding rules or principles (Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986)). The hearing officer made a factual determination that the claimant requested a change of treating doctor because Dr. H was not authorizing diagnostic testing and because the claimant wanted to see a specialist "but not because the claimant wanted to secure a new medical report." We cannot say that the hearing officer abused his discretion.

When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed on all of the appealed issues.

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

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Margaret L. Turner
Appeals Judge