

APPEAL NO. 022990
FILED DECEMBER 12, 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 October 22, 2002. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to and include an injury to the L3-4, L4-5, and L5-S1 levels of her lumbar spine. The claimant appeals, asserting that the hearing officer erred by considering evidence from the prior CCH held in May 2002, which was not properly admitted during this CCH; that the hearing officer inaccurately summarized evidence; that the hearing officer inappropriately discussed evidence relating to the claimant's (previous injury) injury when only the _____ injury was before him; that the hearing officer used evidence that was not admitted; and that, essentially, the hearing officer erred in the way that he referenced some evidence while not mentioning other evidence at all. The respondent (carrier) replied, urging affirmance.

DECISION

Reversed and remanded.

The short answer to most of the claimant's assertions of error is that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is 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); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

In this case, however, the hearing officer has discussed in detail in the Statement of the Evidence a document which the claimant alleges was never admitted into evidence. The document is an addendum, dated April 10, 2002, to an initial peer review report by Dr. P, dated November 6, 2001. Upon review of the record, we agree with the claimant that this addendum was not included in the exhibits properly admitted during the CCH. The index to the claimant's exhibit list refers to Dr. P's peer review report as a four-page document, and that is what Claimant's Exhibit No. 9 consists of. There is no addendum included with that exhibit, or located anywhere else in the documents that were admitted at the CCH. Under these circumstances, we find it necessary to reverse the decision of the hearing officer and remand the case back to the hearing officer with

directions that he consider only the evidence that was properly admitted during the CCH in making his extent-of-injury determination.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge