APPEAL NO. 023090
FILED JANUARY 13, 2003

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 November 4, 2002. With respect to the issues before him, the hearing officer determined that the appellant/cross-respondent (claimant) did not sustain an injury in the course and scope of his employment on _____, and thus had no disability. The hearing officer also resolved that the respondent/cross-appellant (carrier) did not waive the right to contest the compensability of the claimed injury since its dispute was timely, and that the carrier is not relieved of liability for this claim since the claimant notified his employer within 30 days of his alleged injury, in compliance with Section 409.001. The claimant appeals the determinations regarding his purported compensable injury and disability, and the carrier appealed the timely reporting determination and responded to the claimant's appeal, urging that the hearing officer be affirmed in all other respects. The claimant also objects to the hearing officer's excluding from evidence Claimant's Exhibit Nos. 10 and 11, on the basis of untimely exchange. Neither party appealed the hearing officer's determination that the carrier did not waive the right to contest the compensability of the claimed injury because it timely disputed the alleged injury; therefore, that determination has become final pursuant to Section 410.169.

DECISION

Affirmed.

We first address the claimant's evidentiary complaint that the hearing officer erred in excluding the Claimant's Exhibit Nos. 10 and 11, statements from one HF. We review evidentiary disputes under an abuse of discretion standard. In determining whether there has been an abuse-of-discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996, citing Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). Using this standard, we believe that the hearing officer did not abuse his discretion in excluding the Claimant's Exhibit Nos. 10 and 11.

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 of the weight and credibility that is to be given the evidence. We have reviewed the remaining complaints of both the claimant and the carrier regarding the hearing officer's determinations in opposition to them, and have seen sufficient evidence to support the hearing officer's decision and order. The parties presented contradictory evidence on the factual issues and 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, 702 (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). 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. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We do not find so here.

The decision and order of the hearing officer are affirmed.

The true corporate name of the 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.

_____
Terri Kay Oliver
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Edward Vilano
Appeals Judge