

APPEAL NO. 023191
FILED FEBRUARY 10, 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 (CCH) was held on November 20, 2002. The hearing officer determined that the appellant (claimant herein) did not have disability and that he was not entitled to change his treating doctor. The claimant files a request for review asserting that these determinations were contrary to the evidence. The respondent (carrier herein) replies that the hearing officer's decision was supported by the evidence. The claimant later files a second document with attachments.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The first issue we must resolve is jurisdictional. The claimant's initial request for review is clearly timely. However the second document was not timely filed since a request for review must be filed within 15 days (excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code) of a party's receipt of the hearing officer's decision. The Texas Workers' Compensation Commission (Commission) mailed the decision to the claimant on December 5, 2002, according to Commission records. The claimant was deemed to have received this decision within five days or by December 10, 2002. The claimant sent his request for review to the Commission on December 18, 2002, by facsimile transmission, which was received by the Commission the same day. However, the second document with attachments that the claimant sent to the Commission was not sent to the Commission until January 13, 2003, when it was sent by facsimile transmission. Since this second document was not timely filed with Commission we cannot consider it as part of the claimant's appeal and will restrict our review to the claimant's initial request for review.

Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. 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. 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). 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). There was clearly conflicting evidence in this case concerning disability

and based upon the above standard of review, we find no basis to reverse the hearing officer's decision concerning disability.

The hearing officer made a factual finding that the claimant requested a change of treating doctors to secure a new medical report that would take him off work. While there was conflicting evidence regarding this matter, we cannot say that this finding was contrary to the great weight and preponderance of the evidence. This finding alone is sufficient to support the conclusion of the hearing officer that the claimant was not entitled to change treating doctors.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Terri Kay Oliver
Appeals Judge