

APPEAL NO. 030561
APRIL 18, 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 August 12, 2002, with (hearing officer 1) presiding as hearing officer. Hearing officer 1 continued the CCH because the respondent (claimant) was unable to attend the CCH because she was involved in a motor vehicle accident. The CCH was completed on January 21, 2003, with (hearing officer 2) presiding as hearing officer. Hearing officer 2 resolved the disputed issue by deciding that the claimant's compensable injury of _____, does extend to the claimant's cervical spine. The appellant (carrier) appealed hearing officer 2's extent-of-injury determination on sufficiency of the evidence grounds, and asserted that the Texas Workers' Compensation Commission (Commission) erred in not issuing a show cause letter at the first CCH, or acting in any manner, after the claimant failed to attend two prior scheduled CCHs, respectively on August 12, 2002, and November 4, 2002. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 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). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Hearing officer 2 determined that the claimant's compensable injury of _____, does extend to the claimant's cervical spine. We conclude that hearing officer 2's extent-of-injury determination is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier asserts that the Commission erred in failing to send a show cause letter to the claimant for failing to appear at two prior CCHs, respectively August 12, 2002, and November 4, 2002. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 142.10(b) (Rule 142.10(b)) provides that the Commission may continue a hearing on its

own motion or at the request of a party, if the hearing officer determines that the party has good cause. We review cases involving rulings on continuances under an abuse-of-discretion standard. Review of the record indicates that on August 12, 2002, hearing officer 1 was informed that the claimant was involved in a motor vehicle accident that same day and that she would not be able to attend the CCH. On his own motion, hearing officer 1 continued the CCH. The carrier did not object to hearing officer 1's determination. In this case the Hearing Officer Exhibit No. 3, reflects that the CCH was reset for November 4, 2002; however, the appeal file does not contain any record that a CCH was held on November 4, 2002. On January 21, 2003, hearing officer 2 denied the carrier's request for a show cause hearing because the only issue before her was the extent-of-injury issue. The Appeals Panel will not disturb the hearing officer's determinations regarding continuances absent an abuse of discretion. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ); Texas Workers' Compensation Commission Appeal No. 91041, decided December 17, 1991. Under the facts of this case, we find no abuse of discretion in hearing officer 1 continuing the CCH on his own motion, or hearing officer 2 denying the carrier's request for the claimant to show cause for failing to attend previous CCHs because the record does not establish that the claimant actually failed to attend a second proceeding.

Hearing officer 2's decision and order are affirmed.

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, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge