

APPEAL NO. 031953
FILED SEPTEMBER 2, 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 July 8, 2003. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a compensable (lumbar strain/sprain) injury on _____, but that the claimant did not have any disability from that injury

The appellant/cross-respondent (carrier) appealed the injury issue, contending that the hearing officer "applied the wrong standard of proof," pointing out some of the inconsistencies in the case, and asserting reversible error in the hearing officer's refusal to take official notice of a Texas Workers' Compensation Commission (Commission) file which purportedly shows the claimant to have sustained another prior injury while employed with another employer. The claimant appeals the disability issue, contending that her doctor had taken her off work. The carrier responded to the claimant's appeal but the file does not have a response from the claimant to the carrier's appeal.

DECISION

Affirmed.

The claimant testified that on _____, she injured her low back helping to lift a box of harnesses onto a table. Much of the factual evidence of how much the box weighed, how many workers were helping lift the box, what the coworkers saw or did not see, and whether the claimant had complained of back pain prior to the claimed incident was all in dispute. The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The hearing officer can believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The hearing officer did not apply an incorrect standard of proof in her decision.

The carrier also alleges error in the hearing officer's refusal to take official notice of another Commission file that purported to involve the claimant in another prior injury while working for another employer. The carrier acknowledged the only reason it wanted the hearing officer to take official notice of this information was to attack the claimant's credibility (the claimant had denied the prior injury). The carrier cites Texas Workers' Compensation Commission Appeal No. 961858, decided November 6, 1996, for the proposition that "it was reversible error for the Hearing Officer to refuse to take official notice of such records [Commission computer records], and that such notice would probably have resulted in a different finding." In Appeal No. 961858 the Appeals Panel held that the hearing officer "erred in not admitting the printouts of Commission computer records offered into evidence at the CCH." In this case the carrier

acknowledged that the records had not timely been exchanged, and in fact, never offered any of the records into evidence, only asking the hearing officer to take official notice of another Commission file involving another employer (and presumably carrier). However, even more compelling is the fact that the only reason the carrier wanted the hearing officer to take official notice of the records was to attack the claimant's credibility. As explained previously, the hearing officer is the sole judge of the weight and credibility of the evidence, and even if the hearing officer had taken official notice of the file she could also have chosen not to give it any weight. We hold that the hearing officer did not err in refusing to take official notice of records not offered into evidence and distinguish Appeal No. 961858 for the reasons stated.

Regarding the claimant's appeal of the disability issue, the claimant's injury occurred on Friday, (alleged date of injury); the claimant went to the employer's doctor on April 7, 2003, and that doctor diagnosed a strain/sprain and released the claimant to return to light duty. The hearing officer commented that the claimant described her work "as sitting on a stool and sorting." The claimant continued this work until she went to a chiropractor, who took her off work. The hearing officer commented that she did not find the claimant's testimony that she was unable to perform her light duty persuasive and that she did not find the chiropractor's records "persuasive in explaining why the claimant was unable to perform the light duty work." The hearing officer is the sole judge of the weight and credibility to be given medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986)

We affirm the hearing officer's decision and order.

The true corporate name of the insurance 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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge