

APPEAL NO. 032506
FILED NOVEMBER 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 September 10, 2003. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant timely reported his alleged injury to his employer in accordance with Section 409.001; and that the claimant did not have disability because he did not sustain a compensable injury. In his appeal, the claimant argues that the hearing officer's determination that he did not sustain a compensable injury is against the great weight of the evidence. In addition, the claimant asserts error in the hearing officer's denial of his request for an interpreter. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Initially, we consider the claimant's assertion of error related to the denial of his request for a Spanish-language interpreter. Section 57.002 of the Government Code provides that "[a] court shall appoint a certified court interpreter or a licensed court interpreter if a motion for the appointment of an interpreter is filed by a party or requested by a witness in a civil or criminal proceeding in the court." The Texas Supreme Court has determined that an administrative agency hearing is a formal adjudicative proceeding in which the agency "performs in a quasi-judicial function." State v. Thomas, 766 S.W.2d 217, 219 (Tex. 1989). Thus, since evidence is heard and a record is made at a Texas Workers' Compensation Commission (Commission) hearing, it would appear that Section 57.002 would apply to Commission hearings. On November 26, 2002, the Texas Attorney General issued Opinion No. JC-0584, which states that "[a]lthough section 57.002 clearly modifies the authority of a court to determine the qualifications of an interpreter, we do not construe section 57.002 to strip a court of its authority to determine whether a party or witness is able to communicate in English and requires an interpreter." Opinion No. JC-0584 further states:

We construe section 57.002(a) to impose on a court the mandatory duty to appoint a *certified* or *licensed* interpreter when the court appoints an interpreter. See TEX. GOV'T CODE ANN. § 57.002(a) (Vernon Supp. 2002)("[a] court *shall* appoint a *certified* court interpreter or a *licensed* court interpreter") (emphasis added). However, we believe Section 57.002(a)'s conditional clause – "if a *motion* for the appointment of an interpreter is filed by a party or *requested* by a witness," *id.* § 57.002(a) (emphasis added) – indicates that the legislature intended for courts to have discretion to determine whether the party or witness requires an interpreter Furthermore, it would not be reasonable to construe

section 57.002 to require a court to grant every motion or request for an interpreter. For example, the legislature would not have intended to require courts to appoint interpreters when the witness or party clearly does not require one or has requested the appointment of an interpreter in bad faith. See TEX. GOV'T CODE ANN. § 311.021 (Vernon 1998) (in enacting a statute, it is presumed that "a just and reasonable result is intended" and "a result feasible of execution is intended") (Code Construction Act).

Under the guidance of Opinion No. JC-0584, it appears that the hearing officer does have the discretion to deny a request for an interpreter, where, as here, he determines that an interpreter is not required to ensure the claimant's full participation in the hearing. We perceive no reversible error in the hearing officer's denial of the claimant's request for an interpreter.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The claimant had the burden of proof on the injury issue and it presented a question of fact for the hearing officer to resolve. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this instance, the hearing officer simply did not believe the claimant's testimony and evidence tending to demonstrate that he was injured at work as he claimed. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record demonstrates that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability.

hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge