APPEAL NO. 033158
FILED JANUARY 28, 2004

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 6, 2003. The hearing officer determined that: (1) the compensable injury of _____, does not include an injury to the cervical spine or a herniated disc in the low back; and (2) the appellant (claimant) had disability from May 6, 2003, through June 11, 2003. The claimant appeals the extent-of-injury determination and the period of disability on sufficiency of the evidence grounds. The claimant also contends that the hearing officer failed to consider Claimant's Exhibit No. 1, pages 5 through 7, and improperly discredited his testimony on the basis that he used a translator at the hearing. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

We first address the claimant's assertion that the hearing officer failed to consider Claimant's Exhibit No. 1, pages 5 through 7. The claimant cites the following language contained in the Statement of the Evidence:

> The Claimant's Exhibits contain a letter to the Claimant's treating doctor from the Claimant's attorney, dated September 11, 2003. Attached to this letter are questions and hand-written responses. The Benefit Review Conference was conducted on September 9, 2003. Once a case has been set for a [CCH], the parties must conduct discovery in accordance with the [1989] Act and the Rules. No request for a Deposition on Written Questions was sent to the Commission. A Hearing Officer did not approve the questions or issue a subpoena. The Carrier certainly did not have an opportunity to submit cross-questions.

We note that the claimant's exhibits, including the above referenced document, were admitted into evidence without objection. Additionally, the Statement of the Evidence expressly provides that "all evidence was considered." Upon review of the record, we cannot agree that the hearing officer did not consider the document; rather, we read the above language as indicating the weight to be given to the evidence. Accordingly, we perceive no error.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the

evidence presented, we cannot conclude that the hearing officer's determinations are 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).

As stated above, the claimant complains that the hearing officer improperly discredited his testimony on the basis that he used a translator at the hearing. While we do not disagree with the claimant's contention, we do not reverse the hearing officer's decision because the hearing officer also stated, as a basis for her decision, that the claimant's testimony was "contradictory" and inconsistent with video surveillance evidence.

The decision and order of the hearing officer is affirmed.

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

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Margaret L. Turner
Appeals Judge