

APPEAL NO. 033184
FILED JANUARY 20, 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 was held on November 4, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, or on any other relevant date, and that the claimant has not had disability due to any injury occurring on _____, or any other relevant date. The claimant appealed the hearing officer's injury and disability determinations based on sufficiency of the evidence grounds, and asserted that the correct date of injury is "(correct date of injury)." The respondent (carrier) responded, urging affirmance and asserting that the claimant's appeal was not timely filed.

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, as reformed.

The hearing officer's Finding of Fact No. 8, Conclusion of Law Nos. 3 and 4, and the Decision paragraph contain a typographical error. The evidence reflects that the claimant was claiming a date of injury of (correct date of injury), and the hearing officer references a date of injury of (correct date of injury), in the Statement of the Evidence paragraph. We therefore reform the hearing officer's decision to read "(correct date of injury)" wherever it reads "_____."

According to records of the Texas Workers' Compensation Commission (Commission), the hearing officer's decision was mailed to the claimant on November 11, 2003. The claimant was deemed to have received the decision on November 16, 2003, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)). Not counting Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, the claimant had until December 9, 2003, to file her appeal. Section 410.202. A copy of the claimant's appeal was faxed to the Commission on December 8, 2003, and was stamped as received by the Commission's Chief Clerk of Proceedings on that date. The appeal is, therefore, timely.

There was conflicting evidence presented on the disputed issues of injury and disability. The issues of injury and disability are questions of fact. Section 410.165(a) provides that the 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 to 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). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). 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). Applying this standard, we find no basis to reverse the hearing officer's resolution of the injury or disability issues.

The decision and order of the hearing officer are affirmed, as reformed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge