

APPEAL NO. 033248
FILED FEBRUARY 5, 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 June 3, 2003, and continued on November 3, 2003. The respondent (claimant) and his attorney appeared at the June 3, 2003, hearing, however the claimant did not appear at the November 3, 2003, hearing, although his attorney was present. The Texas Workers' Compensation Commission (Commission) sent a letter dated November 4, 2003, to the claimant requesting that he contact the Commission within 10 days to show cause for his failure to attend the November 3, 2003, hearing. The claimant did not respond to the 10-day show cause letter and the record closed on November 19, 2003. The hearing officer determined that the claimant did not have good cause for his failure to appear at the November 3, 2003, hearing; that the claimant sustained a compensable injury on _____, and he had disability from January 20 through March 28, 2003. The appellant (carrier) appealed the hearing officer's injury and disability determinations and argues that the claimant violated Section 410.156 by failing to appear at the hearing and that his nonattendance at the hearing reflects that the claimant has abandoned his claim. In his response, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____, and that he had disability for the period found. The claimant had the burden of proof on the injury and disability issues and they presented questions 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 was persuaded by the medical evidence tending to demonstrate that the claimant was injured at work as claimed and that the injury resulted in disability. 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 and disability determinations are 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 those determinations 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 carrier asserts that the claimant's failure to attend the hearing on November 3, 2003, demonstrates that the claimant has abandoned his claim and that the claimant

violated Section 410.156 by failing to attend the hearing. In the instant case, the claimant's attorney told the hearing officer that he did not know why the claimant failed to attend the hearing, however, the attorney further stated that the claimant has not advised his attorney that he no longer wanted to pursue his claim. The hearing officer issued a 10-day show cause letter to the claimant. The claimant did not respond. We have held that a party is not deprived of an adjudication on the merits of the case due to a failure to attend a hearing. Texas Workers' Compensation Commission Appeal No. 941679, decided February 2, 1995. The hearing officer determined that the claimant did not have good cause for failure to attend the hearing on November 3, 2003, and then proceeded to making findings of fact and conclusions of law on the disputed issues from the evidence presented by both parties. We perceive no error. We note that Section 410.156 specifically provides that a violation of that provision, without good cause, is a Class C administrative violation, which is a matter for the Commission's Division of Compliance and Practices.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge