

APPEAL NO. 033370
FILED FEBRUARY 10, 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 18, 2003. The hearing officer decided that the appellant (claimant herein) was not in the course and scope of his employment when involved in a motor vehicle accident (MVA) on _____, and that the claimant did not have disability. The claimant appeals, contending that the hearing officer erred in finding that he was not in the course and scope of employment when he was injured. The respondent (carrier herein) responds, urging affirmance.

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.

The facts of this case are set forth in the hearing officer's decision and we will not repeat them here. In this case, the hearing officer reviewed the record and decided what facts were established. The hearing officer did not err in determining that the claimant was not in the course and scope of his employment, that the injury in this case is not compensable, and that the claimant does not have disability. The present case turns upon the hearing officer's factual finding that the claimant was not furthering the affairs of the employer at the time he was injured. The claimant argues that this finding was incorrect because there is evidence that at the time of the MVA, the claimant and his supervisor were discussing staffing issues. The claimant argues that this makes the present case analogous to Texas Workers' Compensation Commission Appeal No. 031900-s, decided September 8, 2003, in which we held that the chief executive officer of the employer was furthering the affairs of the employer when he was discussing a business problem with the employer's vice-president of operations at the time he was in an MVA. The difference between this case and Appeal No. 031900-s, *supra*, is that in Appeal No. 031900-s, the hearing officer believed that the business-related conversation was taking place at the time of the MVA. In the present case, the hearing officer apparently did not believe that there was a business-related conversation taking place at the time of the MVA.

Whether or not such a conversation was taking place is clearly a question 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 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 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may 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). As an appeals body, we will not substitute our judgment for that of the hearing

officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust, and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. This is so even though a different fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

We find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

The decision and order of the hearing officer are affirmed.

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.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge