

APPEAL NO. 041688
FILED SEPTEMBER 1, 2004

This appeal on remand 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 February 2, 2004. The hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable injury on _____, and had disability from June 18, 2003, through the date of the hearing. The appellant (carrier) appealed those determinations. The audiotape recording of the February 2, 2004, proceeding was inaudible and, therefore, the case was remanded for reconstruction of the record. A hearing on remand was held on June 18, 2004, at which time the record from the prior proceeding was reconstructed. The hearing officer issued the same decision as he had previously and the carrier appeals that decision. The claimant urges affirmance of the hearing officer's decision on remand.

DECISION

Affirmed.

The carrier asserts on appeal that the hearing officer improperly excluded evidence at the hearing on remand. The carrier does not specifically identify the alleged improperly excluded evidence. However, presumably the evidence in question was the testimony from Mr. S that the claimant was self-employed after his compensable injury. The hearing officer explained that the remand was held for the exclusive purpose of reconstructing the record from the initial hearing and that this testimony was not elicited at the initial hearing. Under these facts, the hearing officer properly excluded the aforementioned evidence offered at the hearing on remand.

The disputed issues in this case involved factual questions for the hearing officer to resolve. 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). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order 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, SUITE 300
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge