

APPEAL NO. 042278
FILED OCTOBER 26, 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 August 20, 2004. The hearing officer determined that the respondent (claimant) sustained a compensable injury (in the course and scope of her employment) on _____, and that the claimant is not barred from pursuing workers' compensation benefits under an election of remedies.

The appellant (self-insured) appealed on sufficiency grounds, contending that the claimant by her own admission "lied" and attempted to commit fraud. The claimant responded, urging affirmance and providing further information why she gave misleading statements.

DECISION

Affirmed.

The claimant, a 22-year employee of the self-insured, testified how she tripped over her briefcase at school sustaining an injury to her left foot on _____. The claimant saw a doctor the same day and gave a history of having fallen at home. The claimant was referred to another doctor to whom she also gave a history of having fallen at home. The claimant's initial medical expenses were submitted under her group health coverage. It was after the first surgery on December 11, 2003, that the claimant reported a workers' compensation injury. There was conflicting evidence whether the injury took place at work or at home. In evidence are statements supporting both versions. The hearing officer recognized the conflicting evidence and determined the claimant's version more credible. The self-insured, at the CCH, identified this case as being a credibility matter.

The disputed issue in this case involved a factual question 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 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer could believe all, part, or none of the testimony of any witness, including the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

Regarding the election-of-remedies issue, the hearing officer referenced and applied the standards set out in Bocanegra v. Aetna Life Insurance Company, 605 S.W.2d 848 (Tex. 1980). We conclude that the hearing officer's decision is supported by sufficient evidence and is not incorrect as a matter of law. Our review indicates that

the hearing officer's decision is not 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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge