APPEAL NO. 950256

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 opened on January 10, 1995, in (city), Texas, with the record closing on January 30, 1995. (hearing officer) presided as hearing officer. The issues at the CCH were injury, timely notice of injury and disability. The hearing officer concluded that the appellant (claimant herein) did not have a compensable injury and had no disability. The hearing officer also ruled that the claimant did not timely report his alleged injury, but had good cause for failing to do so. The claimant appeals alleging that an exhibit was mishandled and that the evidence was contrary to certain findings of the hearing officer. The respondent (self-insured herein) replies that it inadvertently retained an exhibit but returned it to the hearing officer and that there is sufficient evidence in the record to support the decision of the hearing officer.

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 claimant was originally hired by the self-insured as a systems manager in the self-insured's computer services section in 1993. Part of the claimant's duties was to install a new computer system. On May 6, 1994, the new computer system shut down. Self-insured's risk manager, (Ms. W), conducted an investigation of this shutdown. The claimant testified that during the course of this investigation he was interviewed by Ms. W concerning the shutdown and was accused of intentionally causing the computer to shut down and the resulting loss of information. Claimant contends that this accusation caused him to fear that the self-insured intended to file criminal charges which could have resulted in his being jailed as well as adversely affecting his licensing as a peace officer and his career in the computer field.

The claimant testified that he discussed these concerns with his supervisor, (Mr. H). In early June the claimant requested leave, which was approved by Mr. H. While out on leave the claimant was hospitalized for major depression, recurrent and nonpsychotic, and alcohol abuse, episodic. The claimant testified that he believes that he suffered a mental trauma injury stemming from the accusation of intentional misconduct and alleges that as a result he suffered disability from June 20, 1994, through October 31, 1994.

The self-insured argues that the claimant failed to establish a mental trauma injury under the 1989 Act. The self-insured argues that medical records indicate that various family and work stresses, rather than a specific incident, are the cause of the claimant's depression. The self-insured also argues that the investigation of the computer shutdown was a legitimate personnel action.

The claimant disputes the following findings of fact by the hearing officer:

FINDINGS OF FACT

6.In late (month) of (year), Claimant again advised his supervisor that he was having difficulty with the pressure at work and requested time off to deal with the matter.

10.Claimant was released to return to work by [Dr. B] on July 18, 1994, but Claimant was terminated from employment on July 19, 1994, and he remains unemployed as of the date of this hearing.

11.[Dr. B], claimant's treating doctor, diagnosed Claimant as having major depression, recurrent and nonpsychotic, and, alcohol abuse, episodic.

12.Claimant has a past history of depression that predates his employment with [self-insured].

13.Claimant's mental condition including his major depression were not caused by any specific event at work, but are the result of many different factors that developed over the past year only some of which are related to his work activities.

14.The [self-insured's] decision to investigate the computer malfunction problems is a legitimate personnel action and the assignment of the director of risk management to conduct the investigation by the executive director of the [self-insured] was not contrary to law or [self-insured] policy.

In reviewing the challenge of the factual findings of the hearing officer, we are bound to follow the proper standard of appellate review. Section 410.165(a) provides that the contested case 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 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 (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).

In Finding of Fact No. 6, quoted above, the hearing officer found that in (month year) the claimant advised his supervisor that he was having difficulty with the pressure at work and requested time off. The claimant points to evidence in the record that the claimant specifically told his supervisor, Mr. H, that he was concerned about the investigation and the charges made against him. There was testimony from the claimant and Mr. H to that effect. The hearing officer does not negate this by his finding since "pressure at work" may have included the investigation. While the claimant apparently would like a more specific finding, this finding as worded by the hearing officer is supported by sufficient evidence, and we cannot say it was erroneous for the hearing officer not to have specified that "pressure at work" included the investigation of the computer shut down.

The claimant's complaint concerning Finding of Fact No. 10 similarly is that the hearing officer should have been more specific. The hearing officer finds that Dr. B released the claimant to return to work on July 18, 1994. The claimant argues that this release was conditional. There is evidence in the record to that effect, but the hearing officer determined to limit his finding to the existence of the release, not its scope, and there is sufficient evidence to support his finding as stated.

In regard to Finding of Fact No. 11, the claimant contends that Dr. B expressed the opinion that the incident of (date of injury), caused his illness. In Finding of Fact No. 11 the hearing officer does not deal with the cause of the claimant's condition but recites Dr. B's diagnosis. This finding is supported by Dr. B's reports.

The claimant argues that there was no evidence to support the hearing officer's finding (Finding of Fact No. 12) that his depression predates his employment with the self-insured. The claimant testified that he did not have previous depression. There is contrary evidence in the medical reports. For instance the hospital discharge summary by Dr. B dated June 20, 1994, states in part as follows:

> The patient had related that his problems seemed to begin over the last several months, related to increased stressors at work, where he worked as a [sic] supporting depression including sleep, appetite, concentration and an energy disturbance. The patient related a past history of similar experiences that at some points had prevented him from going to work at previous jobs.

It is certainly the province of the hearing officer to resolve this conflict in the evidence and under the standard of appellate review described above it is not for us to disturb his resolution unless the great weight of the evidence is to the contrary, which is not the case here.

In Finding of Fact No. 13 the hearing officer found that the claimant's mental condition including his depression was not caused by a specific factor at work, but resulted from a number of different factors only some of which were work related. The claimant contends that the hearing officer reached this result by giving more weight to the testimony of two coworkers, who swore in affidavits that the claimant had stated that he was depressed over the deaths of friends and family problems, than to the testimony of Mr. H. As stated earlier, the 1989 Act makes the hearing officer the sole judge of the weight to be given the evidence. Section 410.165(a).

In Finding of Fact No. 14, quoted verbatim above, the hearing officer found that the self-insured's decision to investigate the computer malfunction was a legitimate personnel action. The claimant complains that the investigation was not conducted in conformity with the self-insured's internal policy and never resulted in a personnel action. The hearing officer and the claimant are again talking about two different things. The hearing officer merely finds that the *decision* to investigate was proper, which in light of a computer shutdown seems quite reasonable. The claimant is talking about the *method* in which the investigation was conducted. The hearing officer's only finding concerning the method of the investigation was to state assignment of the director of risk management to conduct the investigation by the executive director of the self-insured was not contrary to the law or the employer policy. The hearing officer made no finding as to whether it was appropriate for the director of risk management, or anyone else, to accuse the claimant of causing the shutdown of the system or whether the self-insured followed proper or legitimate procedures in investigating alleged misconduct by an employee. There would be no evidence to support such findings as the self-insured did not present any evidence concerning the investigation. As far as the matters it addresses, Finding of Fact No. 14 is not erroneous. It does not support the conclusion that what the claimant alleges caused his injury--the accusation that he crashed the computer system--was itself a legitimate personnel action. The hearing officer's denial of compensability is not based upon any such conclusion, but on his finding that the claimant's mental condition was not caused by a specific event at work. *See* Texas Workers' Compensation Commission Appeal No. 95011, decided February 15, 1995.

The claimant complains that Self-Insured's Exhibit K appears to include material not admitted into evidence. At the hearing the claimant objected to a portion of Exhibit K, a letter from the self-insured's executive director to the claimant dated July 14, 1994, was not timely exchanged. The self-insured agreed to "reformulate" the exhibit without this letter. Apparently the attorney for self-insured held on to the exhibit to do this, but left the CCH with the exhibit. Once the hearing officer realized the exhibit was not in the record, the self-insured was requested to provide the exhibit to the hearing officer. The self-insured did so, but never removed the letter as agreed. This letter states as follows:

> This letter is to inform you of my decision to not accept your request for Leave Without Pay (LWOP), dated July 5, 1994. Although requested, there was no evidence admitted to show good cause for it to be granted.

This letter should not be part of the record in this case and we strike it from the record. Our review of the entire record indicates that this letter was not used by the hearing officer in making any of the findings challenged on appeal and that without this letter there is sufficient evidence in the record to support his findings. Thus while the failure to remove this letter from the record earlier was erroneous, it was harmless error.

The decision and order of the hearing officer are affirmed.

____
Gary L. Kilgore
Appeals Judge

CONCUR:

____
Stark O. Sanders, Jr.
Chief Appeals Judge

____
Robert W. Potts
Appeals Judge