

## APPEAL NO. 92609

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992). On June 18, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine issues relating to whether an injury was sustained on (date of injury), in the course and scope of employment with (employer), the employer, by the claimant, (claimant), who is the appellant in this appeal. The claimant had claimed during that hearing that he injured his back, but not his shoulder. The hearing officer determined that claimant injured his shoulder on (date), but made no ruling as to the back. The carrier appealed because no medical bills or disability income benefits were claimed for the shoulder. The case was remanded for further consideration, and development if necessary, of the evidence in order for the hearing officer to make findings on the back injury.

On remand, the hearing officer determined (without a second hearing) that the claimant had not sustained either a back or shoulder injury in the course and scope of employment, and ordered that carrier not pay benefits.

The claimant has appealed this decision, asserting that the evidence supports injury to the thoracic spine, which could also be deemed a "shoulder" injury, and that the hearing officer erred by finding that the claimant did not tell his employer of a back injury because there was a mistake in translation in that the claimant may have used an (city) area colloquial Spanish term to refer to the general shoulder blade and upper back area, and, finally, that the hearing officer erred by finding no injury to either the shoulder or the back. The respondent carrier argues that there is no support in the record for the claimant's contention of misunderstanding of an (city) area colloquialism, and otherwise argues evidence that it believes supports the hearing officer's decision.

## DECISION

After reviewing the record of the case, we affirm the determination of the hearing officer.

The facts were previously set forth in Texas Workers' Compensation Commission Appeals Panel Decision No. 92350, decided September 8, 1992, and will not be repeated here. Because the claimant argues in this appeal that the hearing officer erred in not finding that an injury to the back or shoulder occurred in the course and scope of employment (apparently reversing her earlier determination that the claimant injured his shoulder on (date)), we would repeat here that the claimant in the hearing denied that he had told his coworker/interpreter (Mr. M) that he injured his shoulder. Mr. M testified that the claimant could have been referring to his shoulder "area." On the other hand, there is no medical evidence supporting an injury to the shoulder, and claimant did not testify to or assert that he had a shoulder injury. He testified about onset of lower back pain on (date of injury), and received medical treatment for both the thoracic and lumbar spine. Consequently, the hearing officer had all this evidence to review and weigh, and, as is within her power to do

under Article 8308-6.43(e), determined that a compensable injury was not sustained to either body part on (date of injury). We would further note that the claimant worked for a month after the alleged injury, and then did not seek medical treatment until early August or September 1991, at which time thoracic sprain and lumbar discogenic syndrome was diagnosed. The hearing officer could well have inferred that any injury that occurred could well have happened in the time period after May 24, 1991, the claimant's last date of work for employer before he was laid off along with several other employees. In summary, we find that there is sufficient support for the hearing officer's determinations that the claimant did not sustain an injury to his shoulder or his back on (date of injury), in the course and scope of employment, and we do not find support for the claimant's first and third points of error.

The record contains no evidence of any colloquial use of Spanish in the (city) area for the shoulder/thoracic spine, let alone any confusion related to its translation. In any case, there was testimony from claimant at the hearing that he disagreed that he had ever reported a shoulder, rather than a back, injury to his interpreter/coworker. When he gave such testimony, the translator at the hearing was apparently able to separately describe the two body areas in translating the claimant's testimony. A statement in Spanish by the claimant, which was one of the carrier's exhibits at the hearing, does include "espalda," the word that the claimant now says may have led to the confusion, near the end of the statement, but it has been translated in another exhibit as "back." The translation and the Spanish statement indicate that the claimant used another phrase when describing the area between his shoulder blades. We do not therefore find support for the claimant's second point of error.

There is sufficient evidence in the record to support the hearing officer's findings and conclusions that a compensable injury did not occur, and her decision is affirmed.

---

Susan M. Kelley  
Appeals Judge

CONCUR:

---

Robert W. Potts  
Appeals Judge

---

Thomas A. Knapp  
Appeals Judge