APPEAL NO. 931173

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq*.). On November 3 and November 12, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that respondent (claimant) injured her right shoulder in the course and scope of employment on (date of injury), and had disability from March 1 to November 12, 1993. Appellant (carrier) asserts that certain portions of the hearing officer's "Discussion" were misstated and that findings of fact that indicate a compensable injury and disability are against the great weight and preponderance of the evidence. Claimant asks that the decision of the hearing officer be affirmed.

DECISION

We affirm.

Claimant worked for a credit union (employer) in (city), Texas, as a secretary/auditor. On (date of injury), she stated that she hurt her right shoulder as she reached to place a large book on top of a cabinet. She lost her balance in doing so and felt a pop in her shoulder. She did not think anything of it at first and was reluctant to say anything since she had been recently reprimanded. The doctor's notes of (Dr. A) indicated a different basis for the original complaint, but Dr. A did show on March 1, 1993, that he considered range of motion of a shoulder to be decreased. Later, Dr. A wrote that claimant indicated a lifting of a large book in her history of injury. The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. There was no issue of timely notice. The hearing office had sufficient evidence from the claimant to conclude that an injury in the scope of employment on (date of injury), occurred; the medical evidence did not compel the hearing officer to find that no injury occurred at work.

In addition, (Dr. H) then performed surgery on claimant's right shoulder in June 1993. He reports that she had an impingement syndrome with a large spur that was removed. He also said that her injury aggravated the effect of the pre-existent spur.

Claimant testified that she could not go back to work yet because she was still trying to get her strength back in her arm. She also said that Dr. A had not yet released her to go back to work. While the carrier pointed out that the surgeon, Dr. H, in his recent reports did not say that claimant could not work, it provided no evidence that he said she could return to work. A finding of disability can be made without medical evidence. *See* Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. The hearing officer had sufficient evidence upon which to find that disability existed in the period found.

Carrier also takes issue with the hearing officer's recitation of the case by pointing out that he named the wrong party as calling a witness and that the "Discussion" presents only one side. In Texas Workers' Compensation Commission Appeal No. 93955, decided December 8, 1993, it was noted that the 1989 Act does not require the hearing officer to

provide a statement or discussion of the evidence. If he chooses to provide a discussion of evidence, he should provide a reasonably fair summary, but does not have to mention each submission on an issue. The "Discussion" of the hearing officer in this case does not amount to reversible error.

The Appeals Panel will only reverse a hearing officer's determination based on factual findings when the decision is against the great weight and preponderance of the evidence. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The decision and order are not against the great weight and preponderance of the evidence and are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge