APPEAL NO. 980029

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 December 8, 1997. She (hearing officer) determined that the appellant's (claimant) compensable injury was not a producing cause of the her left shoulder "problems" and that the claimant's impairment rating (IR) was 3%. The claimant appeals the extent of injury determination, arguing that it was contrary to the great weight of the evidence. The appeals file contains no response from the respondent (carrier).

DECISION

Affirmed.

The claimant worked as a sewing machine operator. On _____, she sustained a compensable finger puncture wound which later became infected for which she was treated by (Dr. B). On May 9, 1996, Dr. B diagnosed, in addition to the puncture injury, left flexor tenosynovitis and medial epicondylitis as work related, presumably due to repetitive motion. Although, she said, she had shoulder pain at this time, she did not tell Dr. B. The claimant changed treating doctors to (Dr. BG), who, in an Initial Medical Report (TWCC-61) of a visit on May 8, 1996, diagnosed not only the puncture injury, but also the epicondylitis and the tenosynovitis with a date of injury of _____. At some point, the carrier accepted compensability of a left elbow injury with a date of injury of May 9, 1996. Dr. BG continued with these diagnoses with a _____, date of injury in a report of September 9, 1996, for an August 26, 1996, visit. Not until a visit on January 20, 1997, did Dr. BG add a diagnosis of internal derangement of the left shoulder[1] to his prior diagnoses, and he changed the date of injury of May 9, 1996.

Other medical evidence consisted of a report of (Dr. W), who performed a required medical examination of the claimant on November 12, 1996, for the puncture injury. Although the claimant said she told Dr. W about her shoulder pain, the report makes no mention of it. (Dr. S), a carrier-selected doctor, examined the claimant on April 17, 1997, and found no objective evidence of a shoulder injury, but concluded that the shoulder pain was of a radiating nature.

The claimant had the burden of proving that her compensable elbow injury of May 9, 1996, was a producing cause of a shoulder injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). This presented a question of fact for the hearing officer to decide. Texas Workers' Compensation

[1]He also added a diagnosis of left carpal tunnel syndrome which was not an issue in these proceedings.

Commission Appeal No. 93449, decided July 21, 1993. In this case, the claimant testified that she experienced the shoulder pain more or less at the same time as the elbow pain and complained about it to Dr. B and Dr. BG on her initial visits. The medical reports for these visits do not reflect a complaint of shoulder pain. In addition, Dr. S affirmatively found no shoulder injury. The hearing officer, as fact finder was the sole judge of the weight and credibility of this evidence. Section 410.165(a). She was not persuaded that the claimant met her burden of proving that her elbow injury was a producing cause of a shoulder injury. We will reverse a factual determination of a hearing officer only if it is so against the great weight and preponderance of the evidence as to be clearly erroneous and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Having reviewed the record in this case, we find the evidence considered credible and persuasive by the hearing officer sufficient to support this determination.

The hearing officer found that the claimant has a three percent IR by "reforming" the report of (Dr. H), a designated doctor, to include a rating only for the elbow injury. Neither party appeals this procedure or this finding. Having affirmed the determination of the hearing officer on the extent of injury issue, we also affirm the finding of a three per cent IR.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge