

APPEAL NO. 990390

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 3, 1999, a hearing was held. He determined that the respondent (claimant) was compensably injured on _____, and had disability from _____, to the date of this hearing. Appellant (carrier) asserts that the determination that claimant injured his left shoulder at work on _____, is against the great weight of the evidence, citing incorrect histories provided to medical personnel; carrier also stated that the words, "most likely exacerbated" do not state causation within reasonable medical probability. Finally, carrier states that claimant's credibility was in issue. While carrier took issue with disability, it did not discuss the evidence as to disability in its appeal. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

Carrier states that credibility was at issue. A reading of the record clearly shows that claimant's credibility was in issue, through contradictions, omissions, and a felony conviction within the past 10 years. However, credibility is for the hearing officer to determine, not the Appeals Panel. Whether another fact finder would find part or any of claimant's testimony, statement, or representations to medical personnel believable is no basis for overturning this decision.

Claimant worked for (employer) on _____. He testified that he began working for employer on January 13, 1998. Claimant's testimony as to how an injury occurred on _____, was not clear. It dealt with movement of a very expensive die that was also very heavy. Claimant said that a forklift (called a "big j") was moved into place; he then indicated that he may have been pushing the oily die, but he also indicated that he may have been operating the forklift, when the die began to fall; he said he stuck his arm underneath the die (which would appear hard to do if he were operating the forklift), and that dislocated his left shoulder. There was some testimony that the owner came to his area to ask about him and he replied that he would be all right but also said that "something's wrong," and also, "it hurts." Claimant said he was told to go home, which he did. He rested at his mother's house without medical care until July 4, 1998, when some friends said to him, "come on, go to the races," so he went to the races. While at the races, he took off his shirt, apparently dislocating the shoulder again. He was then taken by ambulance for medical care.

In a recorded statement, claimant was asked, "have you had any prior shoulder problems or shoulder surgeries or anything like that," to which he answered, "[n]o I've never had any prior shoulder prior . . . shoulder surgeries or any type . . . I've never had anything wrong with me in my life." Medical records showed that claimant had prior left shoulder dislocations on June 9, 1998; May 16, 1998; January 3, 1998; November 27, 1997; September 15, 1997; May 6, 1997; August 2, 1996; July 28, 1996; May 17, 1996; and

March 13, 1996, with the March 1996 record showing that there is a "history of dislocation of left shoulder." (Most of these medical records of dislocation were from a county hospital.)

Claimant was taken to (hospital) on July 4, 1998. A history was recorded that the shoulder "popped out while raising arm above head. Hx x 4"; another record of the same visit to hospital on July 4, 1998, states, "fell at races landed on left shoulder took shirt off." Another record from the same July 4, 1998, visit to hospital shows "track marks on arms." (Claimant was asked on cross-examination about testing positive for substances including alcohol and cocaine; claimant indicated that he had taken them after the injury because he was in pain, adding, "I didn't have no way to get . . . medical attention.")

Claimant had surgery to his shoulder on October 30, 1998, by Dr. F at (Medical Center). She responded to questions propounded by claimant which included a 12-line recitation of claimant's recurrent left shoulder dislocations and which asked if there was any new and different damage and how this affected claimant's ability to work. Her answers included a reference to claimant's recurrent dislocations (not just the most recent dislocation). She said that claimant has a chronic condition "which was in fact exacerbated by the injury with the dyes of the punch press." She added that he could not work for several weeks after the incident, "as he would have had bleeding and disruption of the tissues on the anterior aspect of the shoulder." She summed up by saying that claimant's chronic problem "was most likely exacerbated in the manner that he describes on the job."

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. While he could have found the claimant not credible and concluded that there was no injury at work but, perhaps, an injury at the racetrack on July 4, 1998, he was not compelled to so find. He could believe claimant's account of the manner of injury at work in _____ even if he found other parts of claimant's testimony or statement incredible. Dr. F's account could be given weight particularly because the background of injury was more specifically pointed out to her in the questions presented for her consideration. If medical evidence is necessary for an injury of this type, then Dr. F's reference to "most likely" sufficiently addresses reasonable medical probability in the affirmative, especially since no specific words are necessary to show reasonable medical probability. In addition, Dr. F's opinion also provides sufficient evidence for the finding of disability.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Alan C. Ernst
Appeals Judge