

APPEAL NO. 990495

On February 9, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issue at the CCH was whether the compensable injury sustained by appellant (claimant) on \_\_\_\_\_, extends to an injury to her right shoulder. Claimant requests reversal of the hearing officer's decision that the compensable injury sustained by claimant on \_\_\_\_\_, does not extend to an injury to her right shoulder. The respondent (carrier) requests affirmance.

DECISION

Affirmed.

Claimant testified that she injured her right shoulder while working for the employer in March 1997 when she was throwing boxes to her supervisor, that she did not make a claim for workers' compensation benefits for that injury, and that her ex-husband's health insurance paid for her medical treatment for that injury. Dr. O saw the claimant on March 12, 1997, for complaints of right shoulder pain and he diagnosed claimant as having bursitis of the right shoulder. Claimant said Dr. O referred her to Dr. OL, an orthopedic surgeon. Dr. OL saw claimant on April 10, 1997, and he diagnosed claimant as having stage II impingement of the right shoulder and noted that x-rays of the right shoulder were normal. Claimant said that Dr. OL gave her cortisone injections in her right shoulder and prescribed home exercises. Claimant said that her right shoulder felt better after the injections. Dr. OL noted on April 24, 1997, that claimant's shoulder was improved 70%, that he gave claimant another injection, that he would keep claimant on her exercises, that he would see claimant again in four weeks, and that he told claimant the chance of surgery was 16%.

The parties stipulated that claimant sustained a compensable injury on \_\_\_\_\_. Claimant said that on \_\_\_\_\_, she twisted her knees and landed on the floor on her right shoulder when she was knocked off a ladder by falling boxes of food while working for the employer. She said that she was more than three and one-half feet off the floor when she fell from the ladder and that boxes fell on her. Carrier said at the CCH that it had accepted a \_\_\_\_\_, injury to claimant's knees. Claimant said that just before the \_\_\_\_\_ accident she was feeling good and that her right shoulder was sore but that she did not have excruciating pain. In a recorded statement taken on May 19, 1997, regarding her accident of \_\_\_\_\_, claimant stated that she had reported her knees as having been injured but made no mention of her shoulder being injured. In an incident report signed by claimant on \_\_\_\_\_ claimant wrote that her knees were injured in the accident of \_\_\_\_\_ and did not mention her shoulder being injured. Claimant said that she did not initially report that she injured her shoulder when she fell on \_\_\_\_\_ because, although her shoulder was a little more painful, she did not think she had injured it until she had a great deal of pain in her shoulder over time and lost mobility of her shoulder. She said that prior to the \_\_\_\_\_ injury, she could move her right arm any way she wanted to but that after the \_\_\_\_\_ injury she slowly started losing mobility of her right arm. Claimant said that about two days

after she fell from the ladder she went to Dr. OL for a scheduled visit and complained about her shoulder and was given another injection.

In a report dated July 15, 1997, Dr. J wrote that claimant told him on that day that she initially injured her shoulder throwing boxes to her boss and that she reinjured her shoulder on \_\_\_\_\_, when she fell from a ladder. Dr. J wrote in the history section of his report of July 25, 1997, that when claimant fell from the ladder she fell on her right shoulder and had a twisting injury to both knees and he recommended bilateral arthroscopic knee surgery. Dr. Y examined claimant at carrier's request on July 30, 1997, and he noted that prior to her injury of \_\_\_\_\_, claimant had been having impingement problems of the right shoulder and he recommended additional conservative care of both knees. Dr. Z reported that an MRI of claimant's right shoulder done on August 5, 1997, showed changes compatible with a complete tear of the rotator cuff. Claimant underwent right shoulder surgery for repair of her rotator cuff on August 28, 1997. Claimant said that prior to her surgery, carrier had denied benefits for her right shoulder injury and that her surgery was paid for by her ex-husband's health insurance. In an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) signed by claimant on December 20, 1997, claimant wrote that on \_\_\_\_\_, her knees were injured when she was knocked off the ladder and that later on she found out she had torn the rotator cuff in her right shoulder.

Claimant had the burden to prove that she injured her right shoulder as claimed. The hearing officer found that claimant did not sustain an injury to her right shoulder when she fell at work on \_\_\_\_\_, and decided that the compensable injury sustained by claimant on \_\_\_\_\_, does not extend to an injury to the right shoulder. The claimant contends that the hearing officer's finding and decision are not supported by sufficient evidence and are contrary to the overwhelming weight of the evidence. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge