

APPEAL NO. 990986

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 13, 1999. She (hearing officer) determined that the respondent's (claimant) compensable head and neck injury of _____, extended to the right shoulder. The appellant (carrier) appeals this determination, contending that it is contrary to the great weight and preponderance of the evidence. The claimant replies that the decision is correct and should be affirmed. She also questions the timeliness of the carrier's appeal.

DECISION

Affirmed.

We find the carrier's appeal timely based on a distribution date of April 21, 1999, mailing of the appeal on May 5, 1999, and receipt on May 7, 1999.

The claimant worked as a supply clerk. She testified that on _____, a box of supplies fell between the shelves of a metal shelving unit. She said she bent over and into the space between the bottom and next-to-the-bottom shelf to retrieve the box and, in the process of backing out, first hit her head and then hit her right shoulder. She described the trauma as "hard" with a bump on her head and that she felt pain and popping in her shoulder. She had prior knee and bilateral carpal tunnel compensable injuries and her medical records reflect some pain radiating up the arm on the right. The carrier has accepted a head and neck injury, but disputes a right shoulder injury.

The initial incident report completed by the claimant on the date of the injury includes a reference to the shoulder. The Initial Medical Report (TWCC-61) of Dr. C for an August 6, 1998, visit diagnosed a shoulder contusion. Dr. P, a carrier-selected doctor, wrote on January 20, 1999, that there was "sufficient documentation in the medical records to suggest that [claimant's] right shoulder problems have some relation to the injury of _____." Other medical evidence suggests an aggravation injury and reflects preinjury complaints of pain radiating into the shoulder.

The claimant had the burden of proving that she sustained a right shoulder injury on _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so was a question of fact which could be proved in this case by her testimony alone if deemed credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In this case, the hearing officer found the claimant credible. In its appeal, the carrier argues that the claimant's right shoulder injury was preexisting, that the claimant failed to immediately report a right shoulder injury, and that the "mechanism of the injury was not consistent with photographs of the area in question." With regard to the latter point, we are at a loss to determine in what way the mechanism of injury was inconsistent with the photographs and carrier sheds no light on this other than in its conclusory assertion to this effect. The

claimant listed her shoulder as a body part injured in her incident report dated the same day as the alleged injury. The claimant also said her earlier shoulder pain radiated up from her wrist and, in any case, did not include the popping she noticed with the current claimed injury.

The hearing officer was the sole judge of the weight and credibility of the evidence. Section 410.165(a). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong 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). Applying this standard of review to the record of this case, we find the testimony of the claimant and medical evidence discussed above sufficient to support the decision of the hearing officer in this case.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge