

APPEAL NO. 991395

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 June 1, 1999. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) compensable injury of _____, did not extend to the right shoulder or the neck. In his appeal, the claimant essentially argues that the extent-of-injury determination is against the great weight of the evidence. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on _____, in the course and scope of his employment as a garbage man. The claimant initially sought treatment at an emergency room. The only complaints noted in the emergency room records were complaints of low back pain. Thereafter, the claimant treated with Dr. A. In an Initial Medical Report (TWCC-61) dated March 29, 1995, Dr. A diagnoses low back syndrome. That report also states that "[t]here is still some pain present in the neck and the right shoulder." The balance of Dr. A's reports reflect complaints of low back pain and treatment to the low back. The claimant testified that he continued to treat with Dr. A until September 1995, and then stopped treating with Dr. A because he was recommending surgery and the claimant did not want to undergo spinal surgery. On June 7, 1995, Dr. C, a neurosurgeon, examined the claimant upon referral from Dr. A. Dr. C's report does not reference complaints of neck or shoulder pain. In addition, that report provides that the claimant's cervical examination "[r]eveals no gross abnormalities." On November 28, 1995, Dr. GA examined the claimant at the request of the carrier for the purposes of determining if the claimant had reached maximum medical improvement, and if so, his impairment rating. Dr. GA's narrative report only references the low back and makes no mention of neck or right shoulder problems or complaints.

On September 24, 1998, the claimant began treating with Dr. H. Dr. H's initial report notes complaints of back pain resulting from the _____, compensable injury and diagnoses lumbar disc disease at L4-5 and L5-S1, lumbar facet syndrome, sciatica, and radiculopathy. In a progress note of November 3, 1998, Dr. H states that in addition to treatment for the lumbar spine, the claimant is "being treated for cervical, thoracic and right shoulder pain which occurred during the accident in 1995." In a letter of February 2, 1999, Dr. H opined that "[a]fter a review of the patient's records which I have seen, it would be my conclusion that in all medical probability the patient injured his neck, upper thoracic, and right shoulder on _____."

The hearing officer determined that the claimant's compensable injury did not extend to his neck and right shoulder. That question presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the

evidence under Section 410.165(a). As such, it was his responsibility to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. A review of the hearing officer's decision demonstrates that he simply was not persuaded that the evidence presented by the claimant was sufficient to sustain his burden of proving that he injured his neck and right shoulder in the _____, injury at work. In making his extent-of-injury determination, the hearing officer noted that the claimant did not explain how he injured his neck and right shoulder in the incident of _____, and further noted "the dearth of medical treatment for the neck and shoulder until late 1998." The hearing officer properly considered each of those factors in resolving the extent-of-injury issue and was acting within his province as the fact finder in determining that the compensable injury did not extend to the neck and right shoulder. Our review of the record does not reveal that the hearing officer's extent-of-injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Dorian E. Ramirez
Appeals Judge