

APPEAL NO. 991533

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 June 24, 1999. The issues at the CCH were whether the appellant's (claimant) compensable injury of _____, extends to and includes his shoulder, or is limited to an injury to his right thumb, wrist, and forearm, and whether he has sustained disability beyond September 27, 1995. The hearing officer determined that the claimant's compensable injury of _____, did not extend to or include an injury to his right shoulder, and that he has not sustained disability after September 27, 1995. Claimant appeals urging, in essence, that he sustained a compensable shoulder injury on _____, arguing that the carrier paid for some medical bills related to his shoulder, that the carrier advanced the position of intervening injuries without proof of them, and that his impairment rating should be reaccomplished because it did not rate his entire injury. The respondent (carrier) urges that there is sufficient evidence to support the decision of the hearing officer and points out the claimant is attempting to raise other issues that were not within the issues before this CCH.

DECISION

Affirmed.

Not in dispute was the fact that the claimant sustained a compensable injury to his thumb, wrist, and forearm on _____, when a large drill-type piece of equipment caught and twisted his thumb, hand, wrist, and forearm causing fractures in his hand/wrist. An operative report refers to "comminuted radius fracture mid distal third, open dislocation of MP joint right thumb with evulsion fracture, metacarpal fracture closed." Medical reports up to August 1996 do not mention any right shoulder injury or problem although the claimant states he complained about his shoulder to doctors before that time and did not know why they did not mention it. There was no evidence as to when or whether the carrier received any medical reports or written notice mentioning any shoulder injury or the relationship of a shoulder injury to the employment. An x-ray of the shoulder was taken and in a report from the claimant's then treating doctor, Dr. T, dated August 5, 1996, indicates "this plain PA view was felt to be normal." In any event, the claimant had been earlier returned to light duty on September 27, 1995, and was paid at the same wage. He continued working until late May or early June 1997, when he stopped working due, according to his testimony, to the pain he experienced from his combined injuries. Although he stated he was off work some days during this period because of his injuries, his testimony was vague and nonspecific as to how many days he was off, when he was off, what injury he was off for, or any other definitive information.

During his testimony on direct examination and again on cross-examination, he stated that from the time he went back to work on September 27, 1995, until he quit, he had two other on-the-job injuries, one to his back and one to his leg. He testified that he hurt his back on (alleged date of injury), and that it was after that date that his shoulder started hurting him. He also testified that he injured his leg (no specific date stated but a reference

is made to November 18, 1996) at work when a heavy piece of iron fell on his foot. He also stated, without specifics, that about that time he also reinjured his arm and his shoulder. He states that from that point he "just kept getting worse in my back, my leg, and also my arm" He states in August 1996 he was placed in three weeks of therapy for his shoulder and that he subsequently rejected a recommendation for cortisone injections.

From the evidence before her, the hearing officer found and concluded that the claimant's _____, injury did not extend to or include a shoulder injury, and that the claimant did not have disability after September 27, 1995. From our review of the evidence, it is clear that the hearing officer's determinations are not against the great weight and preponderance of the evidence or clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). The claimant had the burden of proof on both the extent of injury and the disability issues. Texas Workers' Compensation Commission Appeal No. 950537, decided May 24, 1995; Texas Workers' Compensation Commission Appeal No. 982887, decided January 20, 1999 (Unpublished). The hearing officer discusses the "paucity" of evidence on the issues presented by the claimant and concluded that he had not met his burden of proof on either issue. Although the testimony of a claimant alone can, if believed, establish an injury and disability (Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394 (Tex. 1989)), it is apparent here that the hearing officer did not consider the claimant's testimony convincing or give it much weight, particularly given the lack of specific or definitive information. She was not obliged to accept such testimony at face value. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). Clearly, there was conflict and inconsistency in the evidence and the hearing officer had the responsibility to resolve those conflicts and inconsistencies and arrive at the facts in the case. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Sections 410.165(a) and 410.168(a). Based on the record before us and considering the issues before the hearing officer, we do not find legal or factual error of any prejudicial nature and thus affirm the decision and order.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge