

APPEAL NO. 991895

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 April 21, 1999. She (the hearing officer) determined that the (1st date of injury), compensable injury of the respondent (claimant) was a producing cause of his right shoulder problems. Carrier challenges this determination on sufficiency grounds. Claimant responds that there is no error in the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends that the hearing officer erred in determining that claimant's (2nd date of injury), compensable upper back injury is a producing cause of the claimant's right shoulder problems. Carrier asserts that: (1) claimant's evidence and testimony was not credible and did not establish that claimant sustained a shoulder injury; (2) any shoulder problems were caused by his two motor vehicle accidents (MVAs) that took place in July 1997 and July 1998; and (3) claimant did not tell his treating doctor about his MVAs, so the medical evidence is not reliable. The assertions in carrier's brief concern whether the claimant's evidence was credible.

Claimant had the burden to prove by a preponderance of the evidence that the right shoulder problems were caused by the _____ compensable injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Claimant was not required to prove that the _____ compensable injury was the sole cause of the shoulder problems, but only that it was a producing cause of the shoulder problems. See Texas Workers' Compensation Commission Appeal No. 962391, decided January 8, 1997.

Claimant testified that he sustained a compensable injury on (1st date of injury), while pulling on a piece of equipment. Claimant said he felt pain in his back and indicated the right upper back under the scapular bone. In a report written about one month after claimant's injury, Dr. G stated that claimant said he developed pain in his upper back area after his injury; that he continues to complain of pain "involving the upper back more toward the right side, next to the scapula"; that there is tenderness in that area; and that claimant appears to have muscle spasm, but "this is difficult to evaluate because of the heavy muscle development of this patient." In a September 11, 1998, report, Dr. R stated under "diagnosis," "rotator cuff/sprains/strains/tear/" and "pain shoulder region." In a December 15, 1998, report, Dr. V noted that claimant "showed some trigger points along the medial border of the right scapula." An MRI report did not note a soft tissue shoulder abnormality.

The parties stipulated that claimant sustained a compensable "upper back strain" on _____. The hearing officer determined that claimant's upper back and shoulder injuries

are the result of the (1st date of injury), injury. The hearing officer noted in the decision that there was evidence that claimant's injuries in the MVAs were to parts of his body other than his right shoulder.

The hearing officer considered the conflicting evidence and concluded that claimant's _____ compensable injury was a producing cause of his right shoulder problems. In the appeal of this determination, carrier contends that the evidence did not establish causation. Carrier points to evidence in the record that it contends supports its request for review. Whether the compensable injury was a producing cause of the right shoulder problems was a question of fact for the hearing officer to decide. We will not reverse her determinations because they are not so against the great weight and preponderance of the evidence as to be clearly erroneous and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Section 410.165(a) provides that the hearing officer, as fact finder, is the sole judge of the weight and credibility to be given the evidence. In this case, the evidence conflicted regarding causation. The hearing officer could have chosen to credit the testimony from claimant and the medical evidence from claimant's doctors that claimant did have a shoulder injury in concluding that the compensable injury was a producing cause of the shoulder problems.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Dorian E. Ramirez
Appeals Judge