

APPEAL NO. 000543

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 February 16, 2000. The hearing officer determined that the compensable injury of _____, included the respondent=a (claimant) 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, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant, who is left-hand dominant, operated a paper machine. He testified that on _____, he caught his right hand between two rollers. The machine was quickly shut down and, he said, he was able to yank his hand out. He was taken to an emergency room and referred to Dr. T, who diagnosed a right-hand, crush-type injury and fracture of the right long finger. The fracture was reduced the next day. His hand was placed in a splint and his arm in a sling. He eventually began physical therapy (PT). The carrier did not dispute the right-hand injury.

According to the claimant, he was doing PT for about three weeks and he noticed something wrong with his right shoulder. He said he told his adjuster, but the adjuster refused to discuss it because 30 days had elapsed since the injury. The claimant also said he discussed his right shoulder with Dr. T sometime in May or June 1999, but the carrier would not approve treatment for the shoulder. He also testified that he bought a house and moved into it on April 8, 1999, while his right hand was still "wrapped up." He said he did none of the moving and only packed small items, presumably with his noninjured, dominant left hand. He also denied ever telling Ms. B, his nurse case-manager, that he hurt his right shoulder during the move.

PT records of May 6, 1999, reflect complaints of left shoulder pain. The first mention of right shoulder pain by Dr. T is on October 21, 1999. In this note, Dr. T commented that the claimant could have developed adhesive capsulitis from the months of inactivity of the right upper extremity or when the claimant jerked his hand out of the machine. He considered it "certainly likely" that the shoulder symptoms were "secondary to his original injury." Dr. S examined the claimant on June 22, 1999, presumably at the request of the carrier. On page one of his report he refers to a prior left shoulder injury, but on page three describes a prior right shoulder injury. The hearing officer commented that the latter reference to a right shoulder injury was in error and that the reference should have been to the left shoulder as reflected on the first page of the report.

Ms. B testified that the claimant called her on October 4, 1999, to say he had a shoulder injury after trying to do too much at PT. She also said that she had accompanied the claimant to his medical appointments and that he had not previously complained of a right shoulder injury. She also said that the claimant mentioned his house move to her, but the claimant said that he hurt his left shoulder in the move. A functional capacity evaluation on October 11, 1999, reports complaints of right shoulder pain and weakness.

The claimant had the burden of proving that his compensable injury included his right shoulder. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether it did was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The position of the claimant was that he injured his right shoulder while jerking his hand out of the machine, but did not notice this because his right arm was essentially immobilized for a long period of time after the injury. The carrier argued that the right shoulder complaints did not arise until after the moving incident in April 1999 and noted the general lack of any reference in the medical records to a right shoulder pain until October 1999. It also points to Dr. TY examination report of May 13, 1999, which described the claimant as able to pull his hand out of the machine within 30 seconds or less as indicative of no shoulder injury and that the shoulder could not have been injured simply from lack of use or immobilization. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. She considered him credible in his account of the injury, the later development of right shoulder pain, and his denial that the household move caused the shoulder injury. She also found Dr. T's opinion, mentioned above, supportive of the claimant's account. In finding that the claimant's compensable injury included the right shoulder, she did not give greater weight to the lack of early complaints of right shoulder pain or the other medical evidence. 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 evidence deemed credible and persuasive by the hearing officer sufficient to support her findings and conclusions on the disputed issue.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge