

APPEAL NO. 000736

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 March 6, 2000. The hearing officer determined that, regarding Docket No. _____, the _____, compensable injury does not include the right shoulder; and that the appellant/cross-respondent (claimant) had disability from the _____, injury from August 5, 1999, through the date of the CCH. Regarding Docket No. _____, the hearing officer determined that the claimant did not sustain an injury in the course and scope of employment on _____, and that he did not have disability as a result of this claimed injury. The claimant appeals the determinations that his _____, compensable injury did not include a right shoulder injury, that he did not sustain a compensable injury on _____, and that he did not have disability resulting from a _____, injury, contending that these determinations are against the great weight and preponderance of the evidence. The respondent/cross-appellant (carrier) appeals the determination of disability as a result of the compensable _____, injury, contending that this determination is against the great weight and preponderance of the evidence. Both parties respond to the other=s appeal, contending that the favorable portions of the decision and order are correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

On _____, the claimant struck his right elbow on a tool holder and was referred by the employer to Dr. A. The carrier accepted as compensable this right elbow injury. On March 24, 1998, Dr. A noted full range of motion (ROM) and no right shoulder pain on palpation. In a note of an April 21, 1998, visit, Dr. A wrote that the claimant pulled on the starter cord of a lawn mower two days previous and the pain from the elbow radiated into his right shoulder. Dr. A again found full ROM and no right shoulder pain on palpation. The claimant testified that he did not remember saying to Dr. A that he had pain from pulling a lawn mower starter cord. Dr. A referred the claimant to Dr. S. The claimant said he complained of right shoulder pain, but Dr. S did nothing about it. On June 25, 1998, Dr. S completed a Report of Medical Evaluation (TWCC-69) in which he certified the claimant at maximum medical improvement on that date and assigned a zero percent impairment rating. He was released to return to work without restrictions.

The claimant further testified that on or about _____,¹ he tripped at work and fell on his hands. As a result of this fall, he is contending he injured his right wrist. The carrier has denied liability for this claimed injury. The claimant said the injury appeared to be minor at first, but the pain gradually increased. He said his employer did not allow him to see a doctor

¹The claimant could only say that the date of this claimed injury was around the holidays.

for his right wrist for several months, but during this time, he saw Dr. S for his right elbow. At a visit on February 18, 1999, Dr. S mentioned a fall "three weeks ago, landing on his outstretched wrist" He observed moderate wrist swelling with decreased ROM and skin abrasions. His impression was a wrist sprain. The claimant continued to see Dr. A, who on May 4, 1999, noted complaints of right wrist pain from a fall "around New Year's."

The claimant then saw Dr. P on August 5, 1999. In a report of this visit, he wrote that when a machine hit the claimant's elbow, he jerked his right arm back "causing pain and injury to his right shoulder as well." Dr. P's initial diagnoses included the right elbow and shoulder, but no mention is made of the right wrist. Dr. P referred the claimant to Dr. R who on August 9, 1999, also diagnosed a shoulder and elbow injury, but no mention is made of the right wrist. A right shoulder MRI on August 12, 1999, disclosed anterior cuff tendinosis, bursal distension and joint arthrosis suggestive of impingement. On August 11, 1999, Dr. D provided an orthopedic consult to Dr. P in which he only diagnosed right shoulder and elbow injuries.

Two records reviews by carrier-selected doctors concluded that it was unlikely that the claimant sustained a compensable wrist and shoulder injury.

The decision and order of the hearing officer contains an extensive discussion of the medical evidence and claimant's testimony. She observed that he was "generally a poor historian." She therefore relied more heavily on the medical records for a picture of the significant events of these claims. In particular, she noted that the records do not reflect shoulder pain until the April 21, 1998, report attributes shoulder pain to pulling a lawn mower starter cord. The claimant denied this event. Even on April 21, 1998, Dr. A was still reporting no shoulder pain and full ROM. The hearing officer further commented that Dr. P attributed the shoulder pain to a history of jerking back the arm, but such activity was not described by the claimant. She concluded that the early medical evidence and testimony of the claimant did "not support the diagnosis nor causal link" between the incident on _____, and a shoulder injury. With regard to the claimed wrist injury, the hearing officer found the medical evidence "more troubling." She again noted no record of early complaints of a wrist injury and that when Dr. S first noted a wrist condition on February 18, 1999, he noted a history of a fall some three weeks earlier. From this, the hearing officer concluded that the claimant did not establish that he injured his wrist "at the job on or about _____."

The claimant appeals the findings of no compensable right shoulder and right wrist injury, contending, with regard to the claimed wrist injury, that as long as the claimant did not realize he injured his wrist, one would not expect to see it in medical reports. He also asserts that while Dr. S noted a history of right wrist pain from around the end of January 1999, Dr. A recorded a history of right wrist pain around the end of 1998. He also relies on Dr. D's explanation that the right shoulder pain only developed after the claimant immobilized his right elbow, an assertion that may or may not have been consistent with the other medical evidence.

The claimant had the burden of proving that he compensably injured his right shoulder and right wrist as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The evidence in this case was subject to varying inferences. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In her role as fact finder, she simply found the claimant's evidence unpersuasive on the compensable injury issue. While another hearing officer may have found to the contrary, and there was arguably some evidence which, if taken at face value, supported the claimant's position, this hearing officer concluded otherwise. 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 decline to substitute our opinion of the credibility of the evidence for that of the hearing officer, but find the evidence she deemed credible and persuasive sufficient to support her resolution of the compensable injury issues.

Because the hearing officer did not find a compensable right shoulder and wrist injury, disability could not be based on these claimed conditions. The claimant claimed disability from August 5, 1999, through the date of the CCH. He apparently earned his preinjury wage, whether in regular or light duty, more or less up to this time, and based his claim of disability thereafter on Dr. P's examination of this date, which placed him in an off-work status, for, among other reasons, his compensable right shoulder injury. The existence of disability also presented a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93560, August 19, 1993. We have also held that the compensable injury need only be a cause of the disability, not the only cause. Texas Workers' Compensation Commission Appeal No. 931117, decided January 21, 1994. The hearing officer found Dr. P's report credible and persuasive on the issue of disability. In its appeal, the carrier contends that this evidence does not support the finding of disability. It also points to a lack of evidence from the claimant as to why he went from an ability to earn his preinjury wage for over a year after the compensable injury until August 5, 1999. This is an important question. The hearing officer did not, however, consider it dispositive of the issue of disability in view of the clear statement of Dr. P. Under our standard of review, we find the report of Dr. P, considered credible by the hearing officer, sufficient to support the finding of disability.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge