

APPEAL NO. 000860

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 22, 2000. The record closed March 24, 2000. The hearing officer determined that the _____ compensable injury of the respondent (claimant) extends to his neck, upper back, and right shoulder, but that it does not extend to his head and mid or low back. The hearing officer also determined that claimant had disability from June 22, 1999, through the date of the CCH. Appellant (carrier) appeals the adverse determinations regarding extent of injury and disability on sufficiency grounds. Claimant responded that the Appeals Panel should affirm the hearing officer's determinations.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant's _____ compensable injury extended to his neck, upper back, and right shoulder. Carrier asserts that: (1) claimant sustained a chest contusion injury only; (2) claimant had initially indicated that his injury was mild; (3) claimant waited five days to report an injury; (4) claimant did not tell the safety manager on the date of the injury that he had back or neck pain; (5) claimant's testimony about the mechanism of injury was not credible; and (6) the medical evidence does not support claimant's claim regarding extent of injury.

The hearing officer summarized the facts in the decision and order. Briefly, claimant said he was hit in the chest by a metal wedge and this caused his body to jerk back. Claimant said he injured his neck, chest and right shoulder and that he began to experience upper body pains, headaches, and numbness in his hands. Medical records include diagnoses of cervical disc herniation, right shoulder derangement, thoracic spasm, and a chest contusion.

The applicable law regarding extent of injury and our appellate standard of review are set forth in Texas Workers' Compensation Commission Appeal No. 950537, decided May 24, 1995; Texas Workers' Compensation Commission Appeal No. 951959, decided January 3, 1996; Section 410.165(a); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ); and Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In this case, the hearing officer weighed the evidence and determined that claimant's injury extended to his neck, upper back, and right shoulder. The matters carrier raises in its brief involved credibility and fact issues, which the hearing officer resolved. Appeal No. 951959. The hearing officer is the sole judge of the credibility of the evidence. After reviewing the evidence, we conclude that the hearing officer's determination regarding extent of injury is not so against the great weight and preponderance of the evidence as to be wrong or manifestly unjust. Cain.

Carrier next challenges the sufficiency of the evidence to support the hearing officer's disability determination. Carrier asserts that the hearing officer should not have found the reports of Dr. O to be credible and contends that, if claimant had disability, he did not have disability for an entire year. The hearing officer determined that claimant had disability from June 22, 1999, through the date of the CCH. The applicable standard of review and the law regarding disability are set forth in Texas Workers' Compensation Commission Appeal No. 950264, decided April 3, 1995.

The off-work slips from Dr. O and Dr. F support the hearing officer's disability determination. The hearing officer judged the credibility of the off-work slips and the medical records and determined the period of disability in this case. We will not substitute our judgment for the hearing officer's because her disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Tommy W. Lueders
Appeals Judge