

APPEAL NO. 000984

On April 13, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding the injury sustained by appellant (claimant) on _____, does not extend to and include an injury to his left shoulder; that claimant had disability from September 25, 1999, through December 20, 1999 as a result of the compensable injury sustained on _____; and that claimant did not have disability from December 21, 1999, through the date of the CCH. Claimant requests that the hearing officer's decision on the issues of extent of injury and disability be reversed and that a decision be rendered in his favor on those issues. Respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury to his right upper extremity on _____. Claimant contends that the hearing officer erred in deciding that his compensable injury of _____, does not extend to and include his left shoulder and that he did not have disability from December 21, 1999, through the date of the CCH. Claimant contends that the evidence shows that as a result of his compensable right upper extremity injury of _____, he had to over compensate with his left arm when he returned to work and sustained an injury to his left shoulder.

Claimant testified that he injured his right upper extremity at work on _____, when he was pulling a cart of equipment while working as a maintenance technician for (employer); that the doctors he treated with put him on light duty with restrictions of no use of his right arm and restrictions on lifting; that instead of being put on light duty, he was assigned his regular work duties that required manual labor; that in June 1999 he began complaining of left shoulder pain; that he began seeing Dr. M in September 1999; that Dr. M took him off work because of injuries to both shoulders; and that he has not worked since September 25, 1999.

(BC) testified that she works for employer processing workers' compensation claims; that claimant reported to her that he had an injury to his right shoulder on _____; that claimant never complained to her about an injury to his left shoulder; that claimant was given light duty to perform after the injury to his right shoulder; and that she found out that claimant had left shoulder complaints when she received a call from a doctor's office in September 1999. Work orders in evidence indicate that claimant may have been doing more than light-duty work after his injury.

Several doctors provided conservative treatment for claimant's right upper extremity injury, which was diagnosed as sprains/strains of the elbow, forearm, upper arm, and shoulder, and rotator cuff syndrome. Dr. B wrote on March 29, 1999, that claimant could

return to work with no use of his right hand. Other reports note lifting restrictions. Dr. H wrote that a bone scan of claimant's left shoulder done on July 26, 1999, had findings compatible with acromioclavicular (AC) joint arthrosis. Dr. J reported that an MRI of claimant's right shoulder done on September 22, 1999, was normal.

Dr. M wrote in September 1999 that claimant had bilateral shoulder complaints and that claimant has a left shoulder injury which is a compensatory injury caused by shifting of work tasks to his left upper extremity. Dr. M took claimant off work and wrote that he anticipated that claimant could return to full duty by the middle of December 1999. Testing done in September 1999 showed that claimant had a negative rheumatoid factor. Dr. M wrote on December 8, 1999, that claimant was to remain off work. Dr. M testified that claimant has arthrosis and tendonitis of the left shoulder that is related to claimant's having gone back to full-duty work after being treated for his right shoulder injury. Dr. M referred to the left shoulder injury as a compensatory injury.

Dr. C examined claimant at carrier's request on December 20, 1999, and he diagnosed claimant as having left shoulder AC joint arthralgia that is not causally related to his right shoulder injury and that claimant could return to work at a moderate-duty level. Dr. BR examined claimant at the request of the Texas Workers' Compensation Commission on February 2, 2000, and he reported that claimant has degenerative arthritis of the left AC joint that was preexisting for several years and that while it is possible that work-related activities may have contributed to claimant's left shoulder symptoms, it is equally likely that normal activities of daily living at home would produce symptoms in that shoulder. Dr. BR also wrote that claimant told him that his right shoulder symptoms had ceased about one month before the examination. Claimant denied that he said that. Dr. W reported that an MRI of claimant's left shoulder done on February 16, 2000, was suggestive of left AC joint arthrosis and rotator cuff tendinopathy without evidence of a rotator cuff tear.

With respect to the two disputed issues on extent of injury and disability, the hearing officer decided that the injury to claimant's left shoulder was not a direct result of and did not naturally flow from the compensable injury of _____; that as a result of the compensable injury to claimant's right upper extremity sustained on _____, claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage from September 25 to December 20, 1999; and that any inability of claimant to obtain and retain employment at wages equivalent to his preinjury wage from December 21, 1999, through the date of the CCH is not due to the compensable injury of _____. The hearing officer concluded that claimant's compensable injury of _____, does not extend to and include an injury to his left shoulder and that claimant had disability from September 25, 1999, through December 20, 1999, but not thereafter.

Carrier does not appeal the finding of disability from September 25, 1999, through December 20, 1999. Claimant contends that the hearing officer erred in determining that his compensable injury does not extend to and include his left shoulder and that he did not have disability after December 20, 1999. Claimant had the burden to prove the extent of

his compensable injury and that he had disability. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence. In reaching his decision, the hearing officer apparently gave more weight to the opinions of Drs. C and BR than to Dr. M, which he could do as the trier of fact. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge