

## APPEAL NO. 001772

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 June 20, 2000. The hearing officer determined that the appellant (claimant) did not suffer a compensable injury on \_\_\_\_\_, and did not have disability. The parties agreed that the claimant timely reported the claimed injury. The claimant appealed the compensability and disability determinations, contending that they were against the great weight and preponderance of the evidence. The respondent (self-insured) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

### DECISION

Affirmed.

The claimant was working light duty as a result of a \_\_\_\_\_, left shoulder injury. He testified that on \_\_\_\_\_, he was on a ladder changing a lightbulb when he felt a shock and slipped on the ladder. He said he was able to keep from falling completely to the ground, but in the process injured his right shoulder. Several coworkers testified and explained prior written statements that they did not actually see the fall but heard some noise which drew their attention to the claimant who was standing by the side of the ladder. One of these coworkers also testified that the claimant came to her after the incident and told her he would give her some of his recovery if she would say he fell. This witness said she did not respond to this offer but did see him "slip" on the ladder. She did not remember if he actually fell down any rungs of the ladder.

Medical evidence disclosed variously a right shoulder sprain/strain or rotator cuff tear. The claimant saw Dr. M, D.C., the day after the incident. Dr. M had been his treating doctor for the prior injury. Dr. M's records of a May 13, 1999, visit do not reflect a fall the day before and reflect a decrease in symptoms. Not until a visit of June 24, 1999, is there a mention in the records of the right shoulder. Other physical therapy records reflect some complaints of right shoulder pain before \_\_\_\_\_, and associate it with overuse of the right shoulder to compensate for the previously injured left shoulder. Other medical evidence generally reflects a history of the incident provided by the claimant. The claimant generally explained the lack of reference in the medical records of a right shoulder injury to the failure of the self-insured to complete an accident report. The claimant completed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) on November 30, 1999. The self-insured contended that the matter of a right shoulder injury did not arise until after impairment income benefits were paid out based on a three percent impairment rating for the left shoulder injury.

The claimant had the burden of proving he sustained a compensable injury as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so presented a question of fact for the hearing officer to decide and could be determined based on the claimant's testimony alone

if found credible by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In this case, the hearing officer did not find the claimant credible, nor did he find the medical evidence or testimony persuasive of a right shoulder injury. In his appeal, the claimant argues that his evidence supports his position and that the hearing officer "chose to focus on small details" and gave too much weight to the testimony that the claimant offered a financial benefit to one of the witnesses in exchange for a favorable statement.

Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In his role as fact finder, he could accept or reject in whole or in part any of the evidence. Texas Workers' Compensation Commission Appeal No. 93819, decided October 28, 1993. 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.

We also find no error in the hearing officer's determination that the claimant did not have disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability. Section 401.011(16).

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

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge