

APPEAL NO. 001804

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 July 17, 2000. With respect to the single issue before her, the hearing officer determined that the appellant's (claimant) compensable injury does not extend to or include the left shoulder. In her appeal, the claimant essentially argues that the hearing officer's extent-of-injury determination is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer's decision contains a detailed factual summary that will not be repeated here. Briefly, the parties stipulated that the claimant sustained a compensable left hand injury on _____, while she was working in the employer's health care facility. She explained that an elderly patient grabbed the claimant's left hand with both of her hands and twisted the left hand and wrist. The claimant testified that she injured her left shoulder in the _____ incident at work in addition to her left hand/wrist. The claimant acknowledged that in July 1997 she was injured in an automobile accident, when the car she was driving was rear-ended. She maintained that she injured her neck and back in the motor vehicle accident and that she did not injure her left shoulder.

The claimant maintained that she complained about her left shoulder injury to her initial treating doctor, Dr. C, but that she did not receive treatment on the left shoulder because of communication problems she had with the Spanish-speaking members of Dr. C's staff. However, the claimant acknowledged that she had taken nursing courses in the United States and had taken the examinations, both written and oral, required to obtain her certification in English.

Dr. D, the designated doctor in this case, stated in his narrative report that he did not provide a rating for the claimant's left shoulder because she did not complain of a left shoulder injury to him during the course of his examination. In addition, Dr. D noted that the claimant's medical records did not begin to reference complaints of a left shoulder injury until nearly two years after the _____, injury at work.

Dr. S is the claimant's current treating doctor. Dr. S has performed surgery on the left shoulder and has opined that the claimant injured her left shoulder in the _____, incident at work. Dr. S has also recommended that the claimant undergo a second left shoulder surgery.

The claimant has the burden to prove the nature and extent of her compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App. - Texarkana 1961, no writ). The question of whether the claimant's compensable injury extends to her left shoulder presented the hearing officer with a question of fact. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence before her. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and determines what facts have been established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer may believe all, part, or none of the testimony of any witness. An appeals level body is not a fact finder and it does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619 (Tex. App.-El Paso 1991, writ denied).

In this instance, the hearing officer determined that the claimant did not sustain her burden of proving that her compensable injury extends to her left shoulder. In her discussion, the hearing officer noted that the claimant "did not establish through a preponderance of the evidence that her left shoulder pathology was a result of the compensable injury of _____ based on the totality of the evidence" That is, the hearing officer simply was not persuaded that the claimant had sustained her burden of proof on the extent-of-injury issue. In making her determination, the hearing officer emphasized the delayed manifestation of the claimant's left shoulder symptoms, noting that the claimant's explanation of that delay based on communication problems was not credible in light of the fact that the claimant had taken and passed nursing classes that were conducted in English. Those factors were properly considered by the hearing officer in making her credibility determinations. Our review of the record does not reveal that the hearing officer's determination that the claimant's compensable injury does not extend to or include her left shoulder is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge