APPEAL NO. 001961

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 August 2, 2000. With regard to the only issue before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury to his left shoulder, in addition to his right shoulder, on _____.

The appellant (carrier) appealed, citing all the evidence which supported that the claimant initially only complained of, or reported, a right shoulder injury and stating that the claimant had failed to "show the proper causal connection from medical in this case." The carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant responds, citing evidence to show that the claimant has consistently claimed a bilateral shoulder injury and urging affirmance.

DECISION

Affirmed.

The claimant testified how he was working on a construction site on _____, when he lost his balance and fell backwards several feet off an elevated platform with his right arm hitting a pump and his left elbow and arm hitting the concrete pavement. The claimant testified that he injured both shoulders in the fall. The carrier accepted liability for only a right shoulder injury. At issue is the extent of injury and whether it included the left shoulder.

The claimant sought medical attention for his injury three weeks later from Dr. W, who, in an Initial Medical Report (TWCC-61) of an office visit on October 28, 1998, only notes right shoulder complaints. Dr. W referred the claimant to an orthopedic surgeon, Dr. H, who, in a report dated November 23, 1998, notes the "chief complaint is pain in the right shoulder." The claimant was also examined by a carrier required medical examination doctor, Dr. K, who, in a report of June 4, 1999, only notes right shoulder complaints. The first documentation of the claimant's left shoulder is in a report dated August 5, 1999, by Dr. F, who notes bilateral shoulder complaints.

Subsequently, the claimant began receiving treatment for his left shoulder. In a report dated March 6, 2000, Dr. H writes:

> I do not have any record of his complaining of his left shoulder. I have everything referred to the right shoulder. The only mention of the left shoulder in the chart that I have is very recent, and although he may have complained of it initially to [Dr. W], I have no record of it here in my chart, and I must refer to his original complaint . . . .

Dr. W, in a chart note of February 16, 2000, wrote:

> [The claimant] reminded me of our conversation on original day of evaluation that [left] shoulder had an injury as well but I had recommended [illegible] [right] shoulder first. I don't recall those statements but it is possible . . . .

The claimant submitted statements from family, friends, and coworkers that both shoulders were injured when he fell. In a statement, a nurse commented that Dr. H apparently was also going to operate on the left shoulder.

The hearing officer, in her Statement of the Evidence, commented:

> At the time Claimant fell, the credible evidence has established that Claimant's left shoulder was also injured. Carrier argues that there is no medical to provide the causal connection of the left shoulder problem to the _____ compensable injury. There is sufficient evidence, by Claimant's own accounting of the mechanism of the injury, coupled with the complete medical documentation. Carrier has accepted the right shoulder injury, based on this fall, yet does not want to accept a same or similar injury to Claimant's left shoulder arising out of the same fall. The preponderance of the credible evidence has established that the left shoulder injury is compensable.

The carrier, in its appeal, recites evidence which would indicate that the claimant did not injure his left shoulder in the _____, fall. The claimant cites evidence to the contrary and contends that evidence of causation can be established by the claimant's testimony alone, if believed.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We find there is some evidence to support the hearing officer's decision. 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.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge