

APPEAL NO. 002104

On July 20, 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 that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that the date of injury was _____; that the claimant timely notified his employer of his injury; and that the claimant has not had disability. The claimant requests that the hearing officer's decision that he did not sustain a compensable injury in the form of an occupational disease and that he has not had disability be reversed and that a decision be rendered in his favor on those issues. The respondent (carrier) requests that the hearing officer's decision be affirmed. There is no appeal of the hearing officer's decision regarding the date of injury and timely notice to the employer.

DECISION

Affirmed.

The claimant testified that he has worked for the employer for five years and that he is a forming winder. He operates machines that wind glass fibers onto spools. It is undisputed that the carrier accepted liability for a work-related injury to the claimant's right shoulder. The claimant indicated that the right shoulder injury was from repetitive trauma at work and that the date of injury for that injury was in July 1998. The claimant treated with Dr. I for his right shoulder injury and the claimant continued to work, sometimes with restrictions and sometimes without restrictions. A radiologist reported in June 1999 that an MRI of the claimant's right shoulder showed impingement syndrome and Dr. I referred the claimant to Dr. S that month.

On August 17, 1999, Dr. S gave a pre- and postoperative diagnosis of right shoulder impingement with acromioclavicular joint arthritis and performed surgery on the claimant's right shoulder that day. The claimant was taken off work due to his surgery. Dr. S released the claimant to return to work in October 1999 with the restriction that he work on the winding machine that uses a mechanical lifting device.

The claimant said that he returned to work in October 1999 operating the winding machine that uses the mechanical lifting device but that he developed problems in his left shoulder because he had to use his left arm more at work due to the surgery for his right shoulder. The claimant said that the mechanical lifting device would break down and that he would then have to manually lift the spools of fiberglass. He also said that he had to work overhead 80% of the time. The claimant claims a repetitive trauma injury to his left shoulder.

The claimant's supervisor testified that only 5% of the time would the mechanical lifting device not be operational and that the claimant's overhead work was 40% of the time, mostly pushing buttons and cutting ends off the spools.

The carrier's adjustor wrote that the claimant told her in January 2000 that he was upset with the employer and that he would be reporting a new injury for his left shoulder when the corrective action period he was placed on by his employer expired. The claimant testified that he did not tell the adjustor that he was upset with the employer.

Dr. S took the claimant off work in February because of the claimant's left shoulder problems. A radiologist reported that an MRI of the claimant's left shoulder done on April 25, 2000, was normal. Dr. S diagnosed the claimant as having left shoulder impingement and operated on the claimant's left shoulder in June 2000. Dr. S wrote that the claimant's left shoulder condition is work related.

The claimant appeals the hearing officer's findings that the claimant's work activities required movement of his hands, arms, and shoulders, but did not require repetitive movement of the claimant's hands, arms and shoulders, and that the claimant's left shoulder problem was not caused by his work activities. The claimant also appeals the hearing officer's conclusion that the claimant did not sustain a compensable injury in the form of an occupational disease and that the claimant did not have disability.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer heard the conflicting testimony regarding the claimant's work activities and as the trier of fact was responsible for resolving the conflicts in the evidence. The fact that the carrier accepted a right shoulder injury in _____ does not compel a determination in the claimant's favor with regard to his left shoulder claim. The weight to be given to Dr. S's opinion was for the hearing officer to determine 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. Without a compensable left shoulder injury, the claimant would not have disability as defined by Section 401.011(16) as a result of that claimed injury.

The decision and order of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge