

APPEAL NO. 010125

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on December 29, 2000, the hearing officer resolved the disputed issue by determining that on _____, the appellant (claimant) did not sustain an injury to his neck in addition to his right shoulder. The claimant has appealed, asserting that this determination is against the great weight of the evidence. The respondent (carrier) urges in response the sufficiency of the evidence to support the decision.

DECISION

Affirmed.

Though not stipulated, curiously, it was undisputed that the claimant sustained a rotator cuff injury to his right shoulder at work on _____, when he stepped into a hole with his left leg while carrying a ladder with his right arm, which prevented his falling further into the hole. The claimant testified that he twice had surgery on his right shoulder but that the pain in his neck, which he had felt since the accident, did not resolve. He also said that "at the time, the shoulder was the main deal." In his closing argument, the claimant called attention to all references to neck pain in his medical records beginning with Dr. E, who treated the claimant after Dr. H, and to the opinion of his current treating doctor, Dr. G, that the right shoulder pain masked the neck injury and that the neck injury is related to the fall at work. However, the claimant conceded that the records of Dr. H, who treated the claimant for over six months, do not mention neck pain. The hearing officer notes that the record of Dr. E referring to neck pain is dated June 23, 1999, and that neither the claimant's accident report nor his Employee's Request to Change Treating Doctors (TWCC-53) mention a neck complaint.

In addition to the dispositive conclusion, the claimant challenges the finding that although the claimant may have a neck injury, he did not sustain such injury on _____, or at any other relevant time while performing his job duties. It is clear that the hearing officer did not find the claimant's testimony persuasive. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.169(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We are satisfied that the challenged determination of the hearing officer is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge