

APPEAL NO. 010302

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. The hearing officer resolved the sole disputed issue by determining that the appellant's (claimant) compensable injury of _____, does not extend to the cervical spine or right shoulder. The claimant has appealed on evidentiary sufficiency grounds. The respondent (carrier) urges the sufficiency of the evidence to support the challenged determination.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not extend to her cervical spine or right shoulder. The parties stipulated that the claimant sustained a compensable right upper extremity injury on _____. The claimant testified that, as she was reaching for a box of copy paper on a shelf, the stack of boxes started falling and she threw up her right arm to ward off the boxes and was injured. She surmised that the absence of the mention of neck and shoulder pain in her earlier medical records is explained by the fact that she and her doctors were concentrating on her wrist and thumb injuries, for which she underwent two operations. She also said that she developed reflex sympathetic dystrophy.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(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 hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). It was within the hearing officer's province in weighing the evidence to consider the length of time that passed following the injury before medical evidence of neck and right shoulder symptoms appeared. The hearing officer could also consider the extent to which the medical evidence failed to relate the claimant's claimed neck and shoulder injuries to the compensable injury.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge