

APPEAL NO. 010424

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 February 7, 2001, the hearing officer resolved the sole disputed issue by determining that on _____, the respondent (claimant) sustained a compensable injury to his right shoulder in addition to the left shoulder injury accepted by the appellant (carrier). The carrier has appealed, asserting that the medical evidence of the claimant's having injured his right shoulder at the time he injured the left is not only weak but also suggests that the right shoulder may have been subsequently injured from overuse. The claimant's response urges the sufficiency of the evidence to support the hearing officer's determination.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's right shoulder was injured at the time his left shoulder was injured. The claimant, a diesel mechanic, testified that a coworker operating a tractor with a front-end loader mistakenly tilted the bucket, which contained a large, metal toolbox weighing approximately 300 pounds, towards the claimant who was standing in front of the tractor with pallets behind him and that he automatically threw his arms up to try to keep the toolbox from falling on him but it "drug [him] to the ground." He said that he is left handed and that his left hand stayed with the toolbox longer than did his right hand. The claimant also stated that he subsequently underwent surgery on the left shoulder and that surgery on the right shoulder has been recommended. He conceded, and the medical records reflect, that his right shoulder symptoms arose later than those of the left and stated that he began experiencing right shoulder aching during physical therapy treatment. However, the hearing officer found the claimant's testimony very credible and was persuaded that his right shoulder was injured at the same time as his left. Dr. M, the surgeon, wrote on July 21, 2000, that he felt that the claimant could have injured the right shoulder at the same time he injured the left and that the right shoulder was certainly aggravated by its having to do all the work since the left shoulder surgery. The claimant testified that he has missed no time from work.

While the claimant had the burden to prove that his compensable injury extended to his right shoulder, such burden may, in a case such as this, be established by his testimony alone. 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 challenged factual 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).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge