APPEAL NO. 010792

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 March 26, 2001. The hearing officer resolved the disputed issues by determining that while the respondent's (claimant) compensable injury did not extend to her depression, it did extend to and affect her right elbow, right upper arm (humerus), tendinitis, and right rotator cuff tear. The appellant (carrier) appeals on sufficiency grounds and seeks reversal. The claimant filed a response citing facts in favor of the decision.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury extended to and affected her right elbow, right upper arm (humerus), tendinitis, and right rotator cuff tear. The medical reports on the record indicate that the claimant first complained of pain in her elbow and upper arm because of her _____, compensable injury which resulted from assisting in moving her division at work. When the claimant testified, it was indicated on the record that by "upper arm" she meant the area of her arm from her elbow to her shoulder. Also, the MRI report indicates that the claimant had a torn rotator cuff, at least as of October 29, 2000. The claimant testified that she engaged in no other activity between _____, and October 29, 2000, that could have caused such an injury. The claimant also testified that at the time of her injury, she experienced a "pop" in her upper arm or shoulder and the carrier's peer review doctor stated that she would have experienced that "pop" had she torn her rotator cuff.

We observe that the carrier complained of a possible bias of the hearing officer as allegedly demonstrated in his comments on the record regarding his disdain of peer review doctors hired by carriers. The hearing officer's comments were injudicious and an appellate point was somewhat unnecessarily triggered. However, the Appeals Panel has reviewed the evidence and finds sufficient support for the hearing officer's ultimate determinations regarding the extent of the claimant's injury. A fact finder is certainly entitled to consider whether a doctor has examined an injured worker or merely reviewed medical records in determining what weight to assign that opinion.

The parties presented evidence which legitimately conflicts on the disputed issues. Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). 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). This tribunal

will not disturb the challenged findings of a hearing officer unless they are 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

For these reasons, we affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge