

APPEAL NO. 011052
FILED JUNE 20, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 11, 2001. With respect to the issues before him, the hearing officer determined that the appellant's (claimant) neck, both shoulders, and low back injuries are not related to the compensable injury of _____. The hearing officer further determined that the claimant did not have disability as a result of his _____, compensable injury. The claimant appeals and seeks reversal on sufficiency grounds. The respondent (self-insured) responds and urges that the hearing officer's decision and order be affirmed in all respects.

DECISION

Affirmed.

The hearing officer did not err in limiting the extent of the claimant's _____, injury to his head and chest. The claimant alleges that on _____, as a result of a malfunctioning stripper/buffer, he sustained not only the accepted compensable injuries to his head and chest, but also the contested injuries to his shoulders, cervical spine, and lower back. Evidence adduced at the hearing includes medical reports indicating that the claimant's injuries in those areas are related to other workers' compensation injuries he sustained on the job prior to the one of _____. The hearing officer states in his decision and order that the claimant "has failed to carry his burden of proof to show that he sustained any new damage or harm to his body, either from aggravation of an old injury or as the result of a new injury, as a result of the _____, incident."

The hearing officer did not err in concluding that the claimant did not have disability as a result of his compensable injury of _____. The evidence on the record supports the hearing officer's findings that any disability the claimant suffered was a result of one of his previous on-the-job injuries, as his Work Status Report (TWCC-73) forms show an injury date in 1998. Also, the claimant worked after the _____, incident on a release. See Section 401.011(16) of the 1989 Act.

We note here that the claimant attaches to his appeal documents not before the hearing officer at the time of the CCH and one document excluded from evidence by the hearing officer. The self-insured appropriately complains that these documents should not be considered for the first time on appeal. We agree, as the Appeals Panel will not consider any evidence not before the hearing officer at the time of the CCH, except in the instance of newly discovered evidence. The self-insured accurately points out that these documents were either considered and excluded from evidence by the hearing officer or were readily available to the claimant to have timely exchanged and presented the evidence at the hearing.

The parties presented conflicting evidence on the issues in dispute. Pursuant to Section 410.165(a), 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

Philip F. O'Neill
Appeals Judge