

APPEAL NO. 011129
FILED JULY 03, 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 was held on May 2, 2001. The hearing officer resolved the sole disputed issue by determining that the respondent/cross-appellant's (claimant's) compensable injury of _____, extends to an injury to the right shoulder but not to the low back. The appellant/cross-respondent (carrier) filed a conditional appeal contending that the hearing officer erred in finding that the claimant's compensable injury extends to her right shoulder. The claimant has appealed the determination that her compensable injury does not extend to her low back. The carrier responded urging affirmance. The claimant did not file a response.

DECISION

Affirmed.

The evidence supports the hearing officer's determination that the claimant's compensable injury of _____, extends to the right shoulder but does not extend to the low back. The medical records in evidence show that the claimant's right shoulder was injured on _____, when the top roll of plastic on the machine the claimant was operating knocked her onto another machine injuring both her left and right shoulders and her cervical spine. The medical records further show that the claimant's low back pain did not become apparent until approximately four months after the date of injury.

The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. (Section 410.165(a)). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The Appeals Panel will not disturb a challenged factual finding of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find it so in this case. 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).

The hearing officer's decision and order are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge