

APPEAL NO. 011206  
FILED JULY 11, 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 23, 2001. The hearing officer held that the appellant (claimant) did not carry his burden of proof to show that his shoulder problems in September and October 2000 were the result of a work-related occurrence.

The claimant has appealed, arguing that the decision is against the great weight and preponderance of the evidence, and, further, sent along new medical evidence in support of his appeal. The respondent (carrier) responded by reciting evidence favorable to the decision and asking that it be affirmed.

DECISION

We affirm the hearing officer's decision.

We will not consider new evidence for the first time at the Appeals Panel level. The new medical evidence appears to be a long opinion from one of the claimant's doctors as to the work-relatedness of the claimant's injury, created after the hearing officer's decision was written. It is dated after the date that the claimant filed his appeal. There being no explanation as to why such an opinion could not have been sought and submitted at the CCH, we will not, at this juncture, remand for reconsideration of this record.

The hearing officer did not err in resolving conflicting evidence to determine that the claimant did not sustain a compensable injury. The claimant had a previous shoulder injury in 1998; there was some testimony from the claimant, as well as supervisors, that he attributed his shoulder pain to that prior injury and did not at the time recall an incident at his current workplace that caused injury. His theory of injury appeared to be a mixture of repetitive trauma (because he emphasized the frequency of carrying pipe on his shoulder throughout the five months of his employment) and specific injury (he stated that he first noticed shoulder pain on picking up a particular pipe on \_\_\_\_\_). An emergency room record from October 3, 2000, attributes his discomfort, in part, to formation of scar tissue from his prior injury. The claimant also asserted a neck injury as well as a shoulder injury. An MRI of the neck showed mild bulges at two cervical levels with no canal or cord impingement.

Although the claimant stated at the CCH and on appeal that he pursued a claim under his old injury because he was told to do so by his employer, it was denied by his current employer that he was given any ultimatum that filing a claim with them would cause a loss of his job. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.- Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance

Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). The hearing officer has set forth in his decision why he did not accord credibility to the claimant's testimony linking the claimant's shoulder contusion to his employment, and the record supports the inferences the hearing officer has drawn. We do not read the decision to state that the contusion existed for two years, but that it was not linked to something at the claimant's employment.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm the decision and order.

---

Susan M. Kelley  
Appeals Judge

CONCUR:

---

Elaine M. Chaney  
Appeals Judge

---

Thomas A. Knapp  
Appeals Judge