

APPEAL NO. 011278  
FILED JULY 18, 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 24, 2001. The hearing officer determined that the appellant's (claimant) compensable (right elbow, arm, and wrist) injury does not extend to or include an injury to the cervical spine.

The claimant appeals, contending that "the medical evidence definitely shows" that he injured his neck in the compensable fall on \_\_\_\_\_. The file does not contain a response from the self-insured.

DECISION

Affirmed.

The claimant testified how he was on a ladder (of a truck) when he missed a step, slipped, and grabbed the ladder with his right arm, injuring his elbow. The self-insured has accepted liability for a right elbow, arm, and wrist injury. The claimant went to his family doctor, Dr. S, on \_\_\_\_\_. Dr. S noted only a right elbow injury and referred the claimant to Dr. C, who treated the claimant for his right elbow injury. Dr. C performed right elbow surgery on October 13, 1998. The claimant has subsequently had four additional surgeries to the right wrist and arm.

The first reference to a neck or cervical problem is a progress note dated September 22, 2000, by Dr. D, who references Dr. W saying that the claimant "has a C5-6 radiculopathy." None of Dr. W's reports in evidence mention this medical diagnosis, although an October 11, 1999, report from Dr. W notes that the mechanism of the injury could put the "brachial plexus at risk." Dr. O, the claimant's current treating doctor, in a report of March 27, 2001, notes "a classic brachial plexus stretch type injury . . . as a sequelae" of the compensable injury. Dr. D, in a progress note of January 16, 2001, recites a history of the claimant "hanging from the right arm" and comments that resulting "severe neck pain" is related to the claimant's work-related injury. The claimant saw a number of other health care providers, none of whom make any reference to neck or cervical complaints. The hearing officer found that the medical evidence presented was not persuasive in proving that the claimant's compensable injury extends to or includes the cervical spine. We find that the hearing officer's decision is supported by the evidence.

The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The hearing officer weighed the credibility and inconsistencies in the evidence and the hearing officer's determination on the issue is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Accordingly, the hearing officer's decision and order are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Robert W. Potts  
Appeals Judge