

APPEAL NO. 011315
FILED JULY 23, 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 29, 2001. The hearing officer determined that the appellant/cross-respondent's (claimant) compensable (low back) injury included the thoracic spine but did not include the right shoulder, and that the claimant did not have disability.

The claimant appeals, contending that the compensable injury included the right shoulder and that she has had disability from February 20, 2001, and continuing. The respondent/cross-appellant (self-insured) appealed the extent-of-injury issue, alleging that the compensable injury did not include the thoracic spine. Otherwise, the self-insured responds, urging affirmance. There was no response from the claimant to the carrier's cross-appeal.

DECISION

Affirmed.

The claimant was a substitute custodian for the self-insured. The claimant testified that on _____, as she was pulling a bucket of water out of the sink, she injured her right shoulder and mid-back. In dispute is the body part the claimant reported that she injured. The self-insured has stipulated to a compensable injury, presumably the low back. The claimant saw her regular doctor, Dr. B, on Monday, November 20, 2000. Dr. B, in a report of that date, noted complaints of "upper back and right shoulder pain," diagnosed an "acute dorsal strain," and released the claimant back to work without restrictions. The claimant continued working until about December 21 or 22, 2000, when the claimant took herself off work because of pain. The claimant did not return to see Dr. B until February 20, 2001, for "back pain and some right shoulder and scapular pain." Dr. B diagnosed a dorsal strain and right scapular bursitis, and released the claimant to light duty with restrictions. The claimant testified that the self-insured did not have light-duty work for her. Dr. B took the claimant off work altogether in an off-work slip dated _____. Dr. B, in a report dated April 5, 2001, attributed the claimant's "neck, upper and lower back" complaints to the _____, lifting incident.

The hearing officer not find the claimant credible and commented:

Claimant was unable to give a credible explanation for her failure to go to the doctor for three months, despite what she described as a worsening of her symptoms. It is hard to see how Claimant's right shoulder, which was normal when examined three days after the claimed injury except for complaints of pain, got worse thereafter even though Claimant did not work for the two months before she saw [Dr. B] again on February 20, 2001. Claimant was not entirely credible. She proved injury to her thoracic area, but she failed to prove injury to her right shoulder or disability as a result of her injury.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. 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). The Appeals Panel will not disturb the challenged factual 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 and we do not find them 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 decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge