

APPEAL NO. 011361
FILED JULY 26, 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 15, 2001. The hearing officer determined that the appellant's (claimant) compensable left elbow injury of _____, does not include an injury to the left shoulder, and that the claimant is not entitled to reimbursement for travel expenses for medical treatment from July 12, 2000, through January 10, 2001. The hearing officer's determination on the travel expense issue has not been appealed and has become final pursuant to Section 410.169.

The claimant appeals the extent-of-injury issue, stressing both the severity of the mechanics of the injury and his current treating doctor's opinion on causation. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The hearing officer recited that the claimant, a 55-year-old electrician, sustained a compensable injury on _____, when the drill bit on the drill he was operating got stuck, causing him to lose his footing and be thrown to the floor onto his left elbow. The claimant's appeal emphasizes that the drill was "a large hammer drill" and that when the bit got stuck, the drill swung him around and dropped him about 30 inches to the floor onto his elbow. The claimant saw a doctor once or twice and was referred to Dr. N, who performed left elbow surgery on May 19, 1998. Dr. N placed the claimant at maximum medical improvement (MMI) on March 8, 1999, with a 0% impairment rating. The claimant went to a designated doctor who was apparently of the opinion that the claimant was not at MMI. The claimant, at some time, retained an attorney and apparently attended two benefit review conferences in 1999. The claimant's attorney referred the claimant to Dr. B, D.O., who is the claimant's current treating doctor and who began seeing the claimant in June 1999. Dr. B, for the first time, began referencing a left shoulder injury. In a report dated April 5, 2001, Dr. B stated that the "mechanism of injury could not have left the shoulder unaffected" and that there "is no way to separate the shoulder from the upper extremity." The claimant cites the report of a carrier doctor as showing a shoulder injury in July 1999, but that report only comments that the claimant's pain runs from "his thumb and index finger and up to the shoulder." A referral doctor, in a December 15, 2000, report, recites a repetitive trauma injury sustained while the claimant was doing "overhead reaching activities," as the cause of the claimant's left elbow and left shoulder impingement. The hearing officer commented on these various reports and concluded that the claimant had not met his burden of proving that the compensable left elbow injury includes and extends to the shoulder.

Although Dr. B is quite clear in his opinion that the claimant's left shoulder condition is related to the compensable injury of _____, because the shoulder is connected to the injured arm, the hearing officer obviously had a problem with the fact that the claimant "made no complaints of shoulder pain until he was well over a year post 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 Newark, 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:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge