

APPEAL NO. 011375
FILED AUGUST 1, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on May 16, 2001, the hearing officer determined that the appellant's (claimant) compensable injury of _____, extends to and includes his cervical spine and upper thoracic spine in addition to his right shoulder but does not include his lumbar spine, right arm, right hand, or headaches; that the claimant did not have disability; and that the employer did not extend to the claimant a bona fide offer of employment. The claimant has appealed the adverse determinations concerning the compensability of his lumbar spine, right arm, right hand, and headache injuries as well as the disability determination. The unappealed determinations have become final by operation of law. Section 410.169. The respondent (carrier) urges in response that the evidence is sufficient warrant our affirmance.

DECISION

Affirmed.

The hearing officer did not err in reaching the challenged determinations. The claimant testified that a large, heavy box fell on him at work on _____, striking him on the right shoulder, neck, and mid-back area, and that he sought treatment at a hospital a week later. The November 24, 2000, record of that visit states the diagnosis as right shoulder contusion and reflects that the claimant can return to full-duty work the next day. The claimant said he subsequently obtained treatment at another hospital; that his employment was terminated on January 25, 2001; and that he has been taken off work altogether by his treating doctor. He stated that he cannot even perform sedentary work and is "getting worse all the time." The May 10, 2001, report of the carrier's required medical examination doctor states that he believes that the claimant is able to do his regular work and does not have a serious problem because of the inconsistencies in the history the claimant provides, the way the claimant sought care, and the results of the functional capacity evaluation which he felt were suggestive of malingering.

The extent of the claimant's injury and whether he had disability, issues for which he had the burden of proof, presented the hearing officer with questions of facts to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and her discussion of the evidence reflects that she did not find the claimant's evidence persuasive. We are satisfied that the challenged findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. 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.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge