APPEAL NO. 011490
FILED AUGUST 09, 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 June 7, 2001. With regard to the issue before him, the hearing officer determined that the respondent's (claimant) compensable (right shoulder sprain/strain) injury included a right distal clavicle fracture, and that the claimant had disability from February 23, 2001 (all dates are 2001 unless otherwise noted) and continuing through the CCH.

The appellant (carrier) appeals, citing contradictions in the testimony, and asserting that its doctor is more credible than the claimant's doctor. The carrier's dispute on the disability issue is premised on no compensable injury other than the accepted strain/sprain. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a "die finisher." The claimant testified that on _____, as he was using a "grinder," the grinder slipped and jammed his right arm and shoulder. The carrier accepted liability for a sprain/strain. The mechanism of the claimant's job and exactly what he was doing is disputed. The claimant reported the injury and began working a lighter job. The claimant initially saw his family doctor and then saw an orthopedic surgeon, Dr. H. After an MRI was performed, Dr. H diagnosed a nondisplaced fracture of the right distal clavicle, and in a report dated March 6 stated that it was "more probable than not" that the fracture was related to the work injury.

The carrier disputes that the work could cause a fracture, and presented the testimony of Dr. P, an orthopedic surgeon, who, based on a record review, was of the opinion that the MRI did not show a fracture and in any event the claimant's work would not cause a fracture or if the claimant had a fracture it was due to preexisting osteoarthritis. Dr. P testified that the claimant's sprain/strain should heal without surgery in six to eight weeks.

The evidence, both as to the mechanics of the injury and the medical evidence, is in conflict. We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record, heard the witnesses, and determined what facts were established. We conclude that the hearing officer's determinations were not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge