APPEAL NO. 011532
FILED AUGUST 9, 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 14, 2001. The hearing officer resolved the disputed issues by determining the following:

1. The respondent (claimant) sustained a compensable injury on _____;

2. The claimant had disability resulting from the injury of _____, beginning March 18, 2001, and continuing through June 14, 2001; and

3. The claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under a group health insurance policy.

The appellant (carrier) appealed, alleging that the hearing officer erred in determining that the claimant sustained a compensable injury and had disability as a result of the compensable injury. The carrier also complained that the hearing officer determined an extent-of-injury issue that was not before the parties at the benefit review conference. The issue of election of benefits was not raised on appeal and has become final pursuant to Section 410.169. The claimant did not file a response to the carrier's appeal.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____, and that he had disability from March 18, 2001, and continuing through the date of the CCH. Section 401.011(10) provides that a compensable injury is an injury that arises out of and in the course and scope of employment for which compensation is payable. Section 401.011(16) provides that disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. The hearing officer was persuaded by the claimant's testimony, and determined that the type of injury sustained by the claimant was consistent with the mechanism of injury.

The hearing officer did not err in determining that the claimant sustained a compensable injury to his C7-T1 disc on _____. The hearing officer was merely identifying the claimant's compensable injury as supported by the medical records in evidence, including an MRI which "revealed the existence of a right C7-T1 herniation with some mild canal and right neural foraminal narrowing." (Claimant's Exhibit No. 9.)

The hearing officer did not err in admitting Claimant's Exhibit No. 9, as the carrier did not object to its admission at the CCH.

The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We will reverse the factual determinations of a hearing officer only if those determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

The decision and order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge