

APPEAL NO. 011553
FILED AUGUST 10, 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 April 26, 2001. The hearing officer determined that (1) the appellant's (claimant) compensable injury of _____, extends to the left shoulder but not the right shoulder; (2) the claimant is not entitled to an extension of the date of statutory maximum medical improvement (MMI), pursuant to Section 408.104 of the 1989 Act; and (3) the claimant is not entitled to reimbursement for travel expenses for medical treatment by Dr. G. The claimant appeals the hearing officer's determinations on sufficiency grounds. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Extent of Injury

The hearing officer did not err in determining that the claimant's compensable injury of _____, did not extend to include claimant's right shoulder. The claimant had the burden to prove that he sustained damage or harm to his right shoulder, arising out of and in the course and scope of his employment on _____, or that the claimed right shoulder injury naturally resulted from the compensable injury. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991; Section 401.011(26); see Texas Workers' Compensation Commission Appeal No. 950524, decided May 19, 1995. There was conflicting evidence presented with regard to this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer's determination is 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 (Tex. 1986).

Extension of Statutory MMI

The hearing officer did not err in determining that the claimant was not entitled to an extension of statutory MMI. Section 408.104 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.11(a)(Rule 126.11(a)) provide, in part, that the Texas Workers' Compensation Commission (Commission) may extend the 104-week period of MMI, if the employee has had spinal surgery within 12 weeks before the expiration of the 104-week period. It was undisputed that the claimant underwent spinal surgery on April 17, 2000, and that the claimant's 104-week period expired on July 11, 2000. Because the claimant underwent spinal surgery more than 12 weeks prior to the expiration of the 104-week period, the hearing officer

properly concluded that the claimant was not entitled to an extension of statutory MMI, pursuant to Section 408.104.

Travel Reimbursement

The hearing officer did not err in determining that the claimant was not entitled to reimbursement for travel expenses to Dr. G's office. At issue here is whether the distance traveled between the claimant's residence and Dr. G's office was greater than 20 miles. This was a question of fact for the hearing officer to decide. In view of the evidence presented, the hearing officer could find that the distance was not greater than 20 miles. The hearing officer's determination is not so against the great weight and preponderance of the evidence so as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge