

APPEAL NO. 011805
FILED SEPTEMBER 11, 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 27, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury and that the claimant did not have disability.

The claimant filed two Requests for Review, both timely, one handwritten on a Texas Workers' Compensation Commission (Commission) form Request for Review and the other typed. The handwritten appeal has an attachment, a portion of a medical article. Both appeals stress medical reports favorable to the claimant's position. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Regarding the attachment to the claimant's appeal, the Appeals Panel does not normally consider evidence submitted for the first time on appeal when that evidence was in existence at the time of the CCH, as appears to be the case here. See Texas Workers' Compensation Commission Appeal No. 981979, decided October 7, 1998.

The claimant was employed as a "production operator" working on an assembly line "doing packaging" and putting IV bags in boxes. The claimant had been doing this work for a number of years and in the fall of 1999 began noticing tingling, numbness, and pain in his right shoulder. The claimant began seeking medical treatment for his condition on December 10, 1999, and has not worked since that time.

The claimant has seen at least eight different doctors, including a number of specialists. Initially, the impressions and diagnoses varied but most of the doctors now believe that the claimant has adhesive capsulitis, which the hearing officer refers to as "a frozen shoulder." The hearing officer, in his Statement of the Evidence, comments on several of the doctors' findings. A Commission-appointed required medical examination (RME) doctor, who diagnosed adhesive capsulitis, in commenting on causation, concluded, "I believe that the patient's underlying diagnosis of adhesive capsulitis is related to the work injury of 12/10/99" without explaining the causal relationship. Dr. D, the carrier's RME doctor and an orthopedic surgeon specializing in the extremities, agreed that the claimant had adhesive capsulitis and testified in some detail what adhesive capsulitis is, how it effects the body, and how it is treated. Dr. D testified that "there's no real incident that causes adhesive capsulitis"; that "we don't know what triggers it"; and that the symptoms generally go away after one or two years. The carrier submitted two medical articles which generally support Dr. D's testimony and report.

The hearing officer found that the claimant had not shown by a preponderance of the evidence that there is any causal relationship between his frozen shoulder adhesive capsulitis and his employment. The medical evidence on this point was conflicting. The hearing officer is the sole judge of the weight and credibility of the evidence and resolves 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). 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).

In that we are affirming the hearing officer's decision that the claimant had not sustained a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge