APPEAL NO. 012031
FILED OCTOBER 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 was held on August 6, 2001. The issues were:

> Whether Claimant's [appellant] compensable injury of _____ extends to and includes Claimant's torn rotator cuff, and
>
> Whether Claimant has sustained disability.

The hearing officer determined that the claimant's compensable (right shoulder) injury does not extend to or include a rotator cuff injury and that the claimant has not had disability.

The claimant appealed, asserting that there was no credible evidence to contradict his medical evidence that his compensable injury included "a rotator cuff injury." The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable right shoulder injury on _____ (all dates are 2000 unless otherwise noted), lifting a 50-pound pail in the employer's warehouse. The claimant testified that he went to a hospital emergency room (ER) "the following Tuesday" (apparently _____). An undated ER record only has the diagnosis of a right shoulder strain. The claimant continued to work but said that he continued to have shoulder pain and that he was subsequently seen at the (clinic). The only clinic report is dated July 13, confirms a right shoulder strain, and releases the claimant to full duty with a 10-pound lifting restriction. Although no Employee's Request to Change Treating Doctors (TWCC-53) is in evidence, it is undisputed that the claimant changed treating doctors to Dr. S on July 17. The claimant continued to work throughout until September 7, when he was laid off in a reduction in force. The claimant first saw Dr. S on October 9. Dr. S diagnosed a shoulder "strain/sprain," took the claimant off work, and ordered an MRI. The MRI performed on December 26, had an impression "severe rotator cuff tendinitis with possible partial thickness tear of the proximal supraspinatous tendon." Dr. R, a referral doctor, in a report dated February 2, 2001, commented that the claimant "states that his symptoms are work related" and concluded that the claimant "has right shoulder impingement resulting from a work related injury. [Claimant] is a candidate for arthroscopy." Right shoulder surgery in the form of manipulation under general anesthesia, arthroscopy, and subacromial decompression was performed on February 28, 2001. The operative report stated that the "rotator cuff was not torn." Dr. S, in a report dated April 23, 2001, makes the statement "We feel all of the problems that this patient has had with his shoulder is [sic] due to the injury he sustained on _____ while at work."

The carrier accepted liability for a right shoulder strain and submitted testimony suggesting that the claimant may have engaged in some activities inconsistent with a right shoulder rotator cuff injury during the 15 weeks between the date of injury and September 7, when he was laid off. The hearing officer, in her discussion, comments:

> the Hearing Officer . . . is constrained to note that even though [Dr. S] and [Dr. R] issued opinions to the effect that Claimant's continuing symptoms were due to his on-the-job injury of _____, these doctors issued such opinions based on the history related by Claimant, and these opinions therefore can be neither more nor less reliable than Claimant, himself. Since the Hearing Officer is not of the opinion that Claimant made a particularly reliable witness in his own behalf the Hearing Officer likewise is of the opinion that medical opinions based on Claimant's statements are not sufficiently reliable as to form a proper basis of a decision in Claimant's favor. For this reason, it is appropriate to determine that Claimant's compensable injury of _____ does not extend to or include a rotator cuff injury, and to further determine that Claimant has not sustained disability, since the relatively minor nature of his actual compensable injury would not be expected to have prevented Claimant from obtaining and retaining employment at [the preinjury wage].

Much of this case rests on the credibility of the testimony. Section 410.165(a) provides that 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. 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). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **MID-CENTURY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge