

APPEAL NO. 012251  
FILED NOVEMBER 6, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on August 23, 2001, the hearing officer determined that the appellant's (claimant) compensable injury of \_\_\_\_\_, does not extend to the right shoulder and that (carrier 1) is not liable for the claimant's \_\_\_\_\_, injury. The claimant has appealed these determinations on evidentiary sufficiency grounds. Carrier 1 urges in response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The parties stipulated that on \_\_\_\_\_, the claimant was the employee of (employer 1), and that for purposes of this claim (carrier 2) is the successor in interest to carrier 1. When the claimant was asked on direct examination who his employer was on \_\_\_\_\_, he responded, (employer 2). This discrepancy was not pursued further by the claimant although he testified that carrier 1 paid the medical expenses for his \_\_\_\_\_, injury. The carrier's witness, Ms. H, testified that she is the secretary/treasurer for employer 1, a company formed in 1990, and that on \_\_\_\_\_, the claimant worked for employer 1. Carrier 1 introduced three documents signed on May 1, 1991, by Ms. H reflecting the employer as employer 1 as well as certain documents reflecting that employer 2 had coverage with carrier 1 from July 31, 1990, to July 31, 1991. The claimant introduced a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated February 15, 1995, stating that carrier 1 controverts treatment of the right shoulder as not related to the \_\_\_\_\_, injury. This form reflects that the employer is employer 2. The claimant did not address the issue of carrier 1's liability in his pro se closing argument. The carrier contended that employer 1 was a non-subscriber until August 2, 1991, when it obtained coverage from carrier 1.

The claimant testified that on \_\_\_\_\_, while working as a roustabout for employer 2 he stumbled and fell while carrying some heavy equipment at a well site, landing on his right side and injuring his back, right hip and right shoulder. He said that at the end of his shift that day, Mr. P, the supervisor who saw him fall and helped him up, terminated his employment. Ms. H testified that the claimant's employment was terminated on \_\_\_\_\_, for excessive absenteeism. The claimant insisted that he told his various treating doctors that not only was his back hurt but also his right shoulder but he was unable to account for certain inconsistencies in the history portions of various medical records with respect to a right shoulder injury. The hearing officer found that the claimant did not injure his right shoulder in the course and scope of his employment on \_\_\_\_\_, and that carrier 1 did not provide workers' compensation coverage to employer 1 on \_\_\_\_\_. The claimant had the burden of proof on both disputed issues and those issues presented the hearing officer with questions of fact to resolve. 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 (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The hearing officer makes clear that he did not find the claimant's testimony persuasive. We are satisfied that these findings and the dispositive conclusions on the disputed issues are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

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

**KATHLEEN THOMPSON, VICE PRESIDENT  
2003 EAST LAMAR BLVD., SUITE 100  
ARLINGTON, TEXAS 76006.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Michael B. McShane  
Appeals Judge