

APPEAL NO. 012492
FILED NOVEMBER 14, 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 September 26, 2001. The hearing officer determined that the compensable (low back and left hip) injury of _____, does not extend to and include the cervical area.

The appellant (claimant) appeals, stressing the mechanics of the compensable injury, explaining why he had not complained about his neck earlier, and asserting that some office notes should not have been excluded. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a "runner, dock worker" by the employer, and the parties stipulated that the claimant sustained a compensable injury on _____, when some plywood fell on him, knocking him into a counter. The carrier accepted a low back and left hip injury. The claimant returned to work on January 6, 1997, doing his regular job. The evidence is contradictory as to when the claimant began having neck pain. The claimant filed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) dated December 5, 1997, claiming only a rib and hip injury. The claimant testified that he awoke on the morning of December 9, 1997, with a sore neck, but the records in evidence of various doctors who treated and evaluated the claimant in 1998 make no reference to neck complaints. The claimant sustained a second compensable injury, not at issue here, in _____, with coverage by another carrier (carrier 2). While not entirely clear, the claimant began having neck complaints after the _____ injury and eventually carrier 2 denied liability for cervical surgery. The claimant had cervical surgery on March 16, 2000. The claimant's treating chiropractor and surgeon rendered opinions that the claimant's cervical condition was caused by the compensable 1996 injury in reports dated June 19, 2001, and August 1, 2001.

Some office notes from the claimant's treating doctor were excluded on the carrier's objection that they had not been timely exchanged. The claimant testified that those notes had been exchanged with some other exhibits but there is no documentary evidence to support the claimant's assertion.

The evidence was conflicting and it is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who 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)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ

ref'd n.r.e.). There is sufficient evidence to support the hearing officer's decision. 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).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge