

APPEAL NO. 012516
FILED DECEMBER 6, 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 13, 2001. The hearing officer determined that the compensable injury of _____, does not extend to or include the cervical spine or left shoulder, and that the appellant (claimant) did not have disability as a result of the injury of _____.

The claimant appealed the hearing officer's decision, arguing that the hearing officer erred in determining extent of injury and disability. The respondent (carrier) did not file a response.

DECISION

Affirmed.

Section 410.203(a)(1) provides that the Appeals Panel shall consider the record developed at the CCH. The claimant has attached two documents to the appeal for consideration by the Appeals Panel. Both documents are from the treating doctor, Dr. B, and both are dated August 30, 2001. Document 1, addressed to "To Whom It May Concern," is in evidence as Claimant's Exhibit G and will be considered on appeal, and document 2, addressed to "Dear Providian Financial Credit," is not in evidence and will not be considered on appeal. See Texas Workers' Compensation Commission Appeal No. 92400, decided September 18, 1992; Texas Workers' Compensation Commission Appeal No. 950331, decided April 18, 1995.

The claimant testified that he was employed as a heavy equipment operator for the employer. On _____, he was using a rod to probe the ground when a coworker operating a backhoe struck the rod he was holding in his hands and knocked him to the ground. The claimant sought medical treatment on _____, and was given a prescription for pain. The medical records in evidence dated May 24, 1999, show "degenerative changes in the lower thoracic and lumbar spine with no evidence of fracture, dislocation or subluxation."

In March 2000, he sought an attorney and was referred to another treating doctor, Dr. O, who diagnosed him with cervical and lumbar strain and a head injury. On August 29, 2000, the claimant was laid off from his employment due to a reduction in force. In November 2000, he sought another attorney and was referred to a third treating doctor, Dr. R, who performed an MRI that indicated that the claimant had bulges at C6-7, L1-2, L4-5, and L5-S1.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. Section 401.011(10) provides that a compensable injury is an injury that arises out of and in the course and scope of employment for which

compensation is payable under the 1989 Act. The hearing officer was not persuaded by the claimant's testimony or the medical reports in evidence that the claimant sustained an injury to his cervical spine and left shoulder in the course and scope of employment on _____.

The hearing officer did not err in determining disability. The evidence sufficiently supports the hearing officer's determination that the "[t]he claimant was not unable to obtain and retain employment at wages equivalent to his pre-injury wage from August 29, 1999 to the date of [the] hearing on September 13, 2001 as a result of the injury of _____."

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.). This is equally true of 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).

The decision and order of the hearing officer are affirmed.

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

**CT CORPORATION
350 N. ST. PAUL ST.
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge