

APPEAL NO. 013111
FILED JANUARY 22, 2002

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 November 19, 2001. The appellant (claimant) appeals the hearing officer's determination that his compensable injury of _____, does not include an annular tear at L4-5, a small annular tear at L3-4, and/or a concentric tear in the posterior annulus of the L5-S1 disc. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant testified that he sustained a low back injury while pulling a laundry cart onto a concrete floor when working for his employer on _____; that he was given steroid injections which afford some relief of pain; that he could not work because he could not stand the pain caused by his injury; and that he has not had an intervening injury. The carrier presented evidence to support its assertion that the claimant misrepresented his actual functional ability considering his activities in a surveillance videotape; and that the claimant's back problems are degenerative in nature.

The extent-of-injury issue presented a question of fact for the hearing officer. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Generally, the nature and extent of an injury may be proven by the testimony of the claimant alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer was acting within her province as the fact finder in determining that the claimant did not sustain his burden of proving that his compensable injury included an annular tear at L4-5, a small annular tear at L3-4, and/or a concentric tear in the posterior annulus of the L5-S1 disc. Our review of the record does not demonstrate that the challenged determination is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse the hearing officer's extent-of-injury determination on appeal. Cain; Pool.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION FOR RELIANCE NATIONAL INDEMNITY COMPANY, AN IMPAIRED INSURER** and the name and address of its registered agent for service of process is

**MARVIN KELLY
TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge