

APPEAL NO. 020386
FILED APRIL 2, 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 (CCH) was held on January 15, 2002. The hearing officer determined that (1) the appellant (claimant) did not sustain a compensable injury on _____; (2) the claimant did not have disability; and (3) the claimant does not continue to suffer the effects from her prior compensable injury on _____, after March 10, 2000, to her neck, right hand/arm/shoulder and upper back and she is not entitled to treatment. The claimant appeals the determinations on sufficiency grounds. (Carrier 1) and (carrier 2) urge affirmance.

DECISION

Affirmed as modified.

INJURY AND DISABILITY

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____, and did not have disability. The hearing officer's injury determination involved a question of fact for the hearing officer 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, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer could disbelieve the claimant's evidence, as he did, and determine that the claimant did not sustain injuries to her neck, right shoulder, right arm, right wrist, right hand, chest, and low back while opening a floor safe at work on _____. The hearing officer's injury determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability. Section 401.011(16).

PRIOR INJURY

The following issue was reported from the benefit review conference: Does the claimant continue to suffer the effects from the compensable injury on _____, after March 10, 2000, to her neck, right shoulder/arm/hand and upper back for which she is entitled to treatment? The issue was raised when carrier 1 alleged that the claimant's current condition was a continuation of her compensable injury on _____. Carrier 1 subsequently explained that it had only intended to apprise the Texas Workers' Compensation Commission of the fact that the claimant had filed previous claims for essentially the same conditions. The parties stipulated, at the CCH, that carrier 1 was not claiming that the claimant's current condition is a continuation of the compensable injury

of _____, and agreed that the compensable injury of _____, is not a producing cause of the injury of _____. Following the stipulation, carrier 2 was allowed to withdraw from the proceeding and the issue was not litigated. Notwithstanding, the hearing officer decided, in the decision and order, that the claimant does not continue to suffer the effects from her prior compensable injury on _____, after March 10, 2000, to her neck, right hand/arm/shoulder and upper back and she is not entitled to treatment. Because the matter of whether the claimant continued to suffer the effects of her prior compensable injury was not in controversy, the hearing officer erred in making a determination on the matter. Accordingly, the hearing officer's determination is stricken from the decision and order.

The decision and order of the hearing officer are affirmed as modified.

The true corporate name of the carrier 1 is **STATE FARM FIRE & CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**MR. RON DODD
STATE FARM FIRE & CASUALTY COMPANY
8900 AMBERGLEN BOULEVARD
AUSTIN, TEXAS 78729-1110.**

The true corporate name of the carrier 2 is **FREMONT COMPENSATION COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge