

APPEAL NO. 020795
FILED MAY 22, 2002

Following a contested case hearing held on February 20, 2002, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the sole disputed issue by determining that the appellant's (claimant) compensable injury on _____, does not extend to and include an injury to the lower lumbar spine with radiculopathy into the right hip and right leg. The claimant has appealed on evidentiary sufficiency grounds. The file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The claimant testified that on _____, while moving a pallet at the store where he worked, he tripped over a box on the floor and fell against a railing, striking his right shoulder on a pipe and his right hip on the concrete floor. The claimant initially complained of right shoulder pain and was treated for that injury, which the carrier accepted. He said that within a few weeks, he began to experience pain in his low back, primarily in the hip area, with the pain and numbness radiating down his right leg; that he consistently complained of these symptoms, but his doctor continued to treat only his shoulder and apparently failed to note these additional complaints; and that in August 2001, he changed treating doctors and began receiving chiropractic treatment for his back. The carrier stressed the absence of mention of the claimant's low back and right leg complaints until August 2001, the failure of any of the treating or referral doctors to obtain electrodiagnostic tests, and certain other inconsistencies in the medical records.

The hearing officer found that the medical evidence presented is not persuasive in proving that the claimant's compensable injury extends to and includes an injury to the lower spine with radiculopathy into the right hip and leg. The claimant had the burden of proof by a preponderance of the evidence on the issue in dispute, and the issue presented the hearing officer with a question 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, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). While another hearing officer may well have drawn different inferences from the evidence, we cannot say that the challenged factual finding of the hearing officer in this case is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

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.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge