APPEAL NO. 021636
FILED JULY 29, 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 May 29, 2002. The hearing officer determined that the appellant's (claimant) injury did not extend to the right shoulder and that the Texas Workers' Compensation Commission abused its discretion by approving a change of treating doctor. The claimant appeals these findings; the respondent (carrier) responds that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision as modified.

The date of the undisputed repetitive trauma injury was _____; the hearing officer erroneously refers to the year of the injury as 2001, instead of 2000, in the Statement of the Evidence, Finding of Fact No. 2, Conclusion of Law No. 3, and the concluding decision paragraph. These references are hereby corrected to "_____." A reference to a letter from Dr. LN is also an apparent typographical error in that the letter was from Dr. LY.

The claimant's theory of recovery for an alleged shoulder injury was that immobilization of her right upper extremity following surgery for lateral epicondylitis resulted in impingement. There were conflicting medical opinions on the existence of a right shoulder impingement syndrome as well as its relationship to the compensable injury. An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). We have reviewed all the evidence and cannot agree that the resolution of conflicting evidence is so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. We do not see that the hearing officer gave any weight to the medical record that was not that of the claimant.

Although the claimant argued that one factor in her decision to change her treating doctor was that her previous doctor was a "company doctor," there was no evidence that the doctor was salaried by the employer, and the claimant treated with him (and his referral doctor) for longer than 60 days; he accordingly became the treating doctor. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(c)(2) (Rule 126.9(c)(2)). The claimant also contended in her Employee's Request to Change Treating Doctors (TWCC-53) that she was not given therapy, but also testified as to various home exercises that the referral doctor told her to perform. She stated, although she did not record on the TWCC-53, that the referral doctor "didn't listen" to her complaints of shoulder pain. Neither the treating doctor nor the referral doctor declined to see the

claimant further. The claimant did not go back to the original treating doctor when she felt the referral doctor did not listen. Under the facts of this case, the hearing officer's decision is sufficiently supported.

We affirm the hearing officer's decision and order as modified.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Michael B. McShane
Appeals Judge