APPEAL NO. 022040
FILED SEPTEMBER 23, 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 July 17, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable (left shoulder) injury on _____; that the claimant timely notified his employer of his injury; and that the claimant had disability from April 11 through June 13, 2002.

The appellant (carrier) appeals, principally on an evidentiary sufficiency basis, emphasizing the testimony of the claimant's supervisor, pointing out contradictions in the evidence, and asserting that it is "improbable" that the claimant would trivialize his serious injury for nine months without seeing a doctor. The claimant responds, urging affirmance.

DECISION

Affirmed.

This case strictly boils down to whom to believe. The claimant testified that on _____, as he was pulling down a heavy freight door, he felt a pulling sensation in his left shoulder. The claimant testified that he reported the injury to his supervisor that same day and the next day. The claimant testified that while at home on the evening of _____, as he reached up to pull the chain of a fan his left arm "got stuck." The claimant's supervisor testified that the claimant only told him about the fan incident on _____. The claimant continued working taking over-the-counter medication for pain until February 27, 2002, when he again reported the injury to employer's human resources manager. An MRI performed on _____, showed a large rotator cuff tear and a tear of the long head of the biceps tendon. The carrier argues that it was improbable for the claimant to have continued working at his job for nine months with such a serious injury. The claimant had surgery on April 11, 2002.

There was conflicting evidence but the hearing officer obviously believed the claimant's version. The carrier's position was that the claimant's testimony was not credible because it was contraverted by the supervisor and a coworker. Issues of injury, disability, and timely notification to the employer can, generally, be established by the testimony of the claimant alone, if it is believed by the hearing officer. It was for the hearing officer, as the trier fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Sufficient evidence supports the hearing officer's determinations that the claimant sustained a compensable injury on _____, timely notified his supervisor the same day, and had disability as found by the hearing officer. Nothing in

our review of the record indicates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

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

PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202-2812.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Veronica Lopez
Appeals Judge