

APPEAL NOS. 022097
AND 022098
FILED SEPTEMBER 25, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on July 10, 2002. In Docket No. 1 (2000 injury, Appeal No. 022097) the hearing officer determined that the _____, compensable injury does not extend to and include the cervical spine, closed head injury, and left ear hearing loss; and, that the appellant (claimant) did not have disability as a result of the injury of _____. In Docket No. 2 (the 1999 injury, Appeal No. 022098) the hearing officer determined that the _____, compensable injury is not a producing cause of a closed head injury. The claimant appealed all of the hearing officer's determinations. Respondent 1, Legion Insurance Company (carrier 1) and respondent 2, Fairmont Insurance Company (carrier 2) both responded urging affirmance.

DECISION

Affirmed.

In regard to Docket No. 1 (2000 injury, Appeal No. 022097), the claimant asserts that the hearing officer erred in determining that the laceration of the left ear was not compensable as it was not an issue before the hearing officer. We note that the hearing officer's Conclusion of Law No. 4 was written paraphrasing the extent-of-injury issue before her and accepted by both parties as correct. Although the claimant appears to be confused that the hearing officer determined that the laceration of the left ear was not compensable, we note that carrier 1 accepted the claimant's laceration to his left ear as compensable. Therefore, the hearing officer did not err in determining that the compensable left ear laceration injury of _____, does not extend to or include the cervical spine, closed head injury, and left ear hearing loss.

Extent of injury and disability are factual questions for the fact finder to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The evidence supports the hearing officer's factual determinations. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

With regard to the claimant's assertion that the hearing officer determined that the claimant was drunk, we note that an intoxication issue was not before the hearing

officer. In addition, the hearing officer did not make a finding of fact or conclusion of law regarding intoxication.

In regard to Docket No. 2 (the 1999 injury, Appeal No. 022098), the hearing officer did not err in determining that the compensable injury of _____, is not a producing cause of a closed head injury. The 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)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of insurance carrier 1 is **LEGION INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

The true corporate name of insurance carrier 2 is **FAIRMONT INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**FRANK A. MONTEMARANO
5205 NORTH O'CONNER BLVD.
IRVING, TEXAS 75039.**

Veronica Lopez
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge