

APPEAL NO. 023002
FILED JANUARY 9, 2003

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 October 22, 2002. The hearing officer determined that (1) the compensable injury of _____, extended to include right cubital tunnel syndrome (CuTS) but did not include left CuTS and a herniated disc at C5-6; (2) the appellant (claimant) had disability beginning August 14, 2001, through June 29, 2002; (3) the claimant is owed temporary income benefits (TIBs) from August 14, 2001, through January 9, 2002, the disputed date of maximum medical improvement; and (4) the claimant's eligibility to receive TIBs for the period of January 10 to June 29, 2002, is still in dispute and is not resolved by the hearing officer's decision and order. The claimant appeals the hearing officer's extent-of-injury determination, with regard to the claimed spinal injury at C5-6, on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance. The hearing officer's remaining extent-of-injury determinations and disability determination were not appealed and are, therefore, final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the compensable injury of _____, did not include a herniated disc at C5-6. 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, the hearing officer could find, as she did, that the claimant did not have a herniated disc at C5-6 but developed spinal stenosis as a result of degenerative changes following a prior surgery at this level. 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant asserts that the hearing officer erred in allowing the carrier to dispute an injury at C5-6 in the absence of newly discovered evidence. The claimant contends that the carrier's characterization of this issue as an extent-of-injury issue is, in fact, an attempt to "reopen compensability of a previously accepted claim." We note that the parties stipulated that the carrier accepted only a cervical strain/sprain and right shoulder injury. Under these circumstances, we conclude that the carrier was not seeking to reopen the compensability of a previously accepted claim.

The claimant also questions whether her impairment rating (IR) should include an assessment for a specific disorder of the cervical spine, given the hearing officer's

determination. Because the issue of IR was not before the hearing officer in this proceeding, we decline to address it for the first time on appeal.

The decision and order of the hearing officer are affirmed.

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

**TREVA DURHAM
1000 HERITAGE CENTER CIRCLE
ROUND ROCK, TEXAS 78664.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge