

APPEAL NO. 030122
FILED MARCH 4, 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 December 17, 2002. The hearing officer determined that (1) the appellant (claimant) sustained a compensable injury to the left thigh and right shoulder on _____; and (2) the claimant has not had disability. The claimant appeals these determinations. The respondent (carrier) urges affirmance.

DECISION

Affirmed as reformed.

COMPENSABLE INJURY

The hearing officer did not err in determining that the claimant sustained a compensable injury to the left thigh and right shoulder on _____. The claimant essentially asserts that the hearing officer erred in limiting the compensable injury to the left thigh and right shoulder because extent of injury was not at issue. In the Statement of the Evidence portion of the decision, the hearing officer states, “[t]he parties agreed that although an extent of injury issue was not included as an issue certified at the scheduled benefit contested case hearing, it could somewhat be considered to resolve the disability issue to be determined.” Our review of the record does not reveal such an agreement by the parties, nor does it indicate that an extent-of-injury issue, per se, was actually litigated. Accordingly, we do not read the hearing officer’s decision to specifically limit the compensable injury to include only the left thigh and right shoulder. See Texas Workers’ Compensation Commission Appeal No. 020127, decided March 4, 2002, and cases cited therein. Rather, the hearing officer’s decision indicates the nature of the injury, in part, for the purpose of addressing the issue of disability. See Texas Workers’ Compensation Commission Appeal No. 010322, decided March 22, 2001; Texas Workers’ Compensation Commission Appeal No. 990164, decided March 15, 1999. We, therefore, reform the hearing officer’s decision to state that the compensable injury of _____, includes, but is not necessarily limited to, the left thigh and right shoulder. To be clear, if an extent-of-injury dispute later arises, the parties can proceed with that issue through the dispute resolution process.

DISABILITY

The hearing officer did not err in determining that the claimant has not had disability. 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 claimant's full-duty work release on _____, for injuries to the left thigh and right shoulder, we cannot conclude that the hearing officer's disability 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). Our affirmance of the hearing officer's determination does not preclude the claimant from seeking disability for the remaining claimed injuries, if any, should such claimed injuries be found compensable in a subsequent proceeding.

The decision and order of the hearing officer are affirmed as reformed.

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

**GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge