

APPEAL NO. 030410  
FILED MARCH 31, 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 January 23, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable (right shoulder) injury on \_\_\_\_\_, and that the claimant had disability from September 3 through November 18, 2002.

The appellant (carrier) appealed, contending that the claimant injured his right shoulder at home on August 25, 2002, in an intervening incident. The claimant responds, urging affirmance. The parties agreed that the disability determination was dependent on whether the claimant sustained a compensable injury.

DECISION

Affirmed.

It is undisputed that the claimant, a machinist, fell three or four feet off a machine onto a concrete floor injuring his right shoulder on \_\_\_\_\_, and duly reported the incident to his supervisors. The claimant testified that he continued to work but because of his shoulder injury he was forced to use his left arm. On August 25, 2002, the claimant was working on a light fixture at home when he reached out to grab the fixture with his right arm, felt pain, and accidentally stepped off the step stool. The carrier contends that the claimant's right torn rotator cuff was due to the August 25, 2002, incident at home rather than the \_\_\_\_\_, incident at work.

The determination of which of these two incidents caused the claimant's torn rotator cuff is strictly a factual determination to be resolved by the hearing officer. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer resolves conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

We affirm the hearing officer's decision and order.

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

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

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Daniel R. Barry  
Appeals Judge

---

Chris Cowan  
Appeals Judge