

APPEAL NO. 030676
FILED APRIL 30, 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 (CCH) was held on February 12, 2003. In Docket No. 1, the issue of whether an _____, compensable right shoulder injury included the left shoulder and left elbow was withdrawn by mutual agreement of the parties and the hearing officer properly made no determinations on that issue. With regard to the other docket number, the hearing officer determined that the respondent (claimant) sustained a compensable repetitive trauma injury on (subsequent injury), and that the claimant had disability from April 2, 2002, through the date of the CCH.

The appellant (carrier) appeals, citing evidence which would support a conclusion contrary to the hearing officer's decision and arguing that the great weight of the credible evidence is contrary to the hearing officer's decision. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

At the outset, we note that much, if not most, of the evidence was in conflict. The claimant, a stocker, sustained a compensable right shoulder injury on _____, and had right rotator cuff surgery on January 22, 2002. The claimant returned to light work on February 6, 2002, with a restriction against using his right arm. The claimant's light-duty job consisted of running paper into a shredder. Many of the details of this job, such as whether the claimant had a hopper next to the shredder or whether the claimant had to put the paper in a trash bag and drag it into the hall; whether a supervisor was available to help the claimant; and whether the claimant pulled out staples was disputed and in conflict. The claimant was taken off work from March 6 through March 27, 2002, for rehabilitation of his right shoulder. The claimant returned to work on or about (subsequent injury), began to experience problems with his left shoulder and elbow, and was subsequently taken off work by his family doctor. The parties stipulated that Dr. D was a Texas Workers' Compensation Commission-appointed required medical examination doctor. Dr. D's report, dated August 29, 2002, can be read to say that the claimant's preexisting left shoulder injury from _____, was aggravated and exacerbated "after returning back to light-duty work causing full rotator cuff and subsequent pain."

There is no doubt that there was substantial conflicting evidence presented at the CCH and that the claimant's testimony was less than specific. However it is the hearing officer, as the fact finder, who is the sole judge of the weight and credibility that is to be given to the evidence. Section 410.165(a). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-

Houston [14th Dist.] 1984, no writ). Where there are conflicts in the evidence, the hearing officer resolves the 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). This is true even though another fact finder could have drawn different inferences from the evidence, which would have supported a different result. Salazar, et al. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.)

Accordingly, the hearing officer's decision and order are affirmed.

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

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Robert W. Potts
Appeals Judge