

APPEAL NO. 030982
FILED JUNE 12, 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 March 26, 2003. The hearing officer determined that (1) the compensable injury of _____, extends to include right shoulder subacromial impingement syndrome and AC joint impingement; and (2) the respondent (claimant) had disability beginning October 10, 2002, and continuing through the date of the hearing. The appellant (carrier) appeals these determinations, asserting *res judicata* and sufficiency of the evidence points of error. The claimant did not file a response.

DECISION

Affirmed.

We first address the carrier's contention that *res judicata* bars litigation of the above issues as they relate to the right shoulder injury. The carrier contends that the compensability of the claimant's impingement injuries and any resultant disability were addressed in a prior proceeding. Our review of the record reveals that the prior proceeding concerned the compensability of a right rotator cuff tear, as well as injuries to the neck, back, and wrists. In view of an operative report changing the claimant's diagnosis from a right rotator cuff tear to right shoulder subacromial impingement syndrome and AC joint impingement, the hearing officer determined that the compensable injury did not include a rotator cuff tear and the claimant did not have disability resulting from such a condition. Contrary to the carrier's assertion, the compensability of the claimant's right shoulder impingement injuries was not adjudicated, as that issue was not before the hearing officer. Under these circumstances, we cannot agree that the doctrine of *res judicata* bars litigation of the issues presented in this proceeding.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions 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 determinations are 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 decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge