

APPEAL NO. 031031
FILED JUNE 10, 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 April 8, 2003. The hearing officer determined that the respondent's (claimant) _____, compensable injury caused tendon injuries to the claimant's biceps and rotator cuff and additionally aggravated his lumbar spine condition, but that it does not include the diagnosis of subcromial impingement (right and left), mild glenohumeral arthritis, lumbar spinal stenosis of moderate to severe degree at L3-4 and L4-5 with primarily lateral recess stenosis at L5-S1 and stenosis prominent by congenitally short pedicles sensory dysfunction L4-S1 with mild deficit at L4. The hearing officer further determined that the claimant did have disability as a result of his _____, compensable injury beginning on _____, and continuing through the date of the hearing. The appellant (carrier) appealed, asserting that the hearing officer's determinations that the claimant suffered tendon injuries to his biceps and rotator cuff, aggravated his lumbar spine condition, and had disability are not supported by the evidence. The claimant responded, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant, a truck driver, sustained a compensable injury on _____, while unloading freight. The extent of the claimant's compensable injury and whether it resulted in disability were in dispute. The claimant testified that a crate weighing 1,000 pounds shifted into him causing injuries to his low back, bilateral shoulders, and right knee. The claimant presented medical records into evidence to support his position that he did sustain damage or harm to the above-mentioned body parts, and that the damage or harm has caused him to have disability from the date of the injury through the date of the hearing. The carrier presented medical evidence to show that the claimant's current conditions were preexisting, and that if the claimant has an inability to work, it is not due to his compensable injury but instead it is attributable to his non-compensable injuries.

In resolving the extent-of-injury and disability issues, the hearing officer made findings of fact that the claimant suffered tendon injuries to the biceps and rotator cuff, and that he suffered an aggravation to his low back in the incident of _____. As such, we imply that he made conclusions of law reflecting the same.

The questions of extent of injury and whether the claimant had disability presented questions of fact for the hearing officer to resolve. This is equally true regarding the determination as to whether or not the claimant's inability to obtain or retain employment at his preinjury wages was due to the compensable injury or some other non-compensable condition or factor. The hearing officer is the sole judge of the

weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 330
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Elaine M. Chaney
Appeals Judge