

APPEAL NO. 031043  
FILED JUNE 5, 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 March 26, 2003. The hearing officer resolved the disputed issues by deciding that the compensable injury of \_\_\_\_\_, does extend to include the claimant's right rotator cuff tear and that the appellant/cross-respondent (claimant) did not have disability from May 27 through September 20, 2000, but did have disability from September 21 through November 28, 2000. The claimant appealed the unfavorable disability determination. The respondent/cross-appellant (carrier) responded, urging affirmance. The carrier cross-appealed the determination that the claimant had disability from September 21 through November 28, 2000, and the extent-of-injury determination on legal and evidentiary grounds. The claimant responded, urging affirmance.

DECISION

Affirmed.

It is undisputed that at a prior CCH, it was determined that the claimant sustained a compensable injury on \_\_\_\_\_, in the form of an inflammation of the right rotator cuff and that the carrier waived its right to dispute the compensability of the claimed injury by not timely disputing the claimed injury. It is further undisputed that those determinations have become final. The carrier argues that it was error for the hearing officer to consider waiver in her determinations and that any conclusion based on that analysis must be reversed. In recent decisions addressing carrier waiver, we have held that a carrier may not avoid the mandates of Section 409.021 by the recasting of the primary injury as an extent-of-injury issue. See Texas Workers' Compensation Commission Appeal No. 021907, decided September 16, 2002; Texas Workers' Compensation Commission Appeal No. 021569, decided August 12, 2002; and Texas Workers' Compensation Commission Appeal No. 022183, decided October 9, 2002. The evidence is clear, in this case, that the primary claimed injury was to the right shoulder. As such, the hearing officer did not err in determining the carrier waived its right to contest compensability under Section 409.021. We find no merit in the carrier's contention that the rationale of Appeal No. 021569 should not apply to this case. Further, the hearing officer specifically found that, "the subscapularis tear was directly related to the injury of \_\_\_\_\_." Medical evidence existed in the record to support this determination.

The carrier additionally argues that the hearing officer erred when she determined that the claimant had a torn subscapularis muscle/tendon in the right shoulder which comprises part of the muscles/tendons forming the rotator cuff. However, the operative report states, "there is some synovial hypertrophy anteriorly and in retrospect, this is probably in the area of the subscapularis rotator cuff tear."

Extent of injury and disability were factual questions for the hearing officer to resolve. Injury and disability determinations can be established by the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, the testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record indicates that the hearing officer's decision 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).

We affirm the decision and order of the hearing officer.

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

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

---

Margaret L. Turner  
Appeals Judge

CONCUR:

---

Elaine M. Chaney  
Appeals Judge

---

Robert W. Potts  
Appeals Judge