

APPEAL NO. 031100
FILED JUNE 11, 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 27, 2003. With respect to the single issue before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to and include spondylolisthesis of L4 on L5. In his appeal, the claimant argues that the hearing officer should have recused herself because she had previously been involved in this case as a benefit review officer (BRO); that the hearing officer did not "properly explain the basis of the decision and order"; and that the determination that the compensable injury does not include spondylolisthesis of L4 on L5 is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Initially, we consider the claimant's argument that the hearing officer should have recused herself from this case because she had previously been involved in the case as a BRO. The claimant did not raise an objection to the hearing officer's presiding at the hearing because of her past involvement in the case as a BRO. The record reflects that the hearing officer did not preside over the benefit review conference that immediately preceded the hearing and indeed, the only evidence of her involvement as a BRO is in a letter to the claimant scheduling an appointment with a doctor appointed by the Texas Workers' Compensation Commission to provide a causation opinion on whether the spondylolisthesis was part of the compensable injury. In arguing that the case should be remanded for a new hearing with a different hearing officer, the claimant cites Texas Workers' Compensation Commission Appeal No. 960417, decided April 17, 1996, where a hearing officer's decision and order were reversed and the case was remanded because certain comments of the hearing officer at the hearing tended to demonstrate that he had decided the issues before he heard all of the evidence. There is simply no evidence that the hearing officer in this case decided the issue before she heard all of the evidence, or in any other way was biased against the claimant. Accordingly, we reject the claimant's contention that the case should be remanded for a hearing with a different hearing officer as being without merit.

The claimant had the burden to prove that his _____, compensable injury extends to and includes spondylolisthesis of L4 on L5. There was conflicting evidence presented on that question. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As such, the hearing officer was required to resolve the conflicts and inconsistencies in the evidence and determine what facts the evidence established. In this instance, the hearing officer simply was not persuaded that the claimant sustained his burden of

proving the causal connection between his compensable injury and the spondylolisthesis. The hearing officer was acting within her province as the finder of fact in so finding. Nothing in our review of the record reveals that the challenged determination is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Finally, the claimant also argues that the hearing officer did not properly explain the basis for her decision and order. The hearing officer stated the parties' respective positions on the issue of whether the claimant's compensable injury caused his spondylolisthesis and then stated that the claimant did not sustain his burden of proof on the extent issue. That provided sufficient explanation of the basis for the hearing officer's decision and we cannot agree that the hearing officer was required to provide a more detailed rationale for her decision.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **GREAT WEST CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**DAVID SARGENT
HERMES SARGENT BATES, L.L.P.
1717 MAIN STREET, SUITE 3200
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge