

APPEAL NO. 031236  
FILED JUNE 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 April 18, 2003. The disputed issue at the CCH was whether the respondent's (claimant) compensable injury of \_\_\_\_\_, included an injury to the cervical spine. The appellant (carrier) appeals the hearing officer's decision that the claimant's compensable injury of \_\_\_\_\_, included an injury to the cervical spine in the form of cervical spondylosis with right C5-6 cervical radiculopathy. The carrier contends that the hearing officer's decision is not supported by sufficient evidence and that it exceeds the scope of the disputed issue. No response was received from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury to his right shoulder on \_\_\_\_\_. After a cervical MRI and an EMG were performed, the claimant was diagnosed as having cervical spondylosis with right C5-6 cervical radiculopathy, and a referral doctor recommended that the claimant have cervical surgery. The claimant contended at the CCH that the cervical spondylosis with right C5-6 cervical radiculopathy is due to his compensable injury. The carrier contended that if the claimant sustained a compensable neck injury, it was limited to a cervical sprain, and that the diagnosed cervical spondylosis with right C5-6 cervical radiculopathy is not part of the compensable injury, but instead is due to a preexisting degenerative condition, as testified to by a peer review doctor. The Texas Workers' Compensation Commission referred the claimant for a required medical examination (RME), and the RME doctor opined that the claimant's cervical spondylosis with right C5-6 cervical radiculopathy is due to the claimant's work-related injury.

As noted, there was conflicting evidence presented at the CCH. 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. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In light of the respective positions of the parties at the CCH regarding whether the cervical spondylosis with right C5-6 cervical radiculopathy is part of the compensable injury, we do not agree with the carrier's contention that the hearing officer exceeded the scope of the disputed issue in determining that the compensable injury includes an injury to the cervical spine in the form of cervical spondylosis with

right C5-6 cervical radiculopathy, because that was the issue that was actually litigated by the parties with regard to the cervical injury issue.

We affirm the hearing officer's decision and order.

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

---

Robert W. Potts  
Appeals Judge

CONCUR:

---

Chris Cowan  
Appeals Judge

---

Thomas A. Knapp  
Appeals Judge