

APPEAL NO. 031339  
FILED JUNE 27, 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 29, 2003. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury to his left shoulder; that because there is no compensable injury "there can be no date of injury" (DOI); and because there is no compensable injury, there can be no disability.

The claimant appealed, principally on a sufficiency of the evidence basis, pointing to a statement from a coworker and some of the medical evidence. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant, an automobile tech, contends that he sustained a left shoulder injury on \_\_\_\_\_, replacing a transmission in a van. There was conflicting evidence, to include documentation that the claimant had x-rays of the left shoulder in November 2001, that there were various possible DOIs, and that the van the claimant was working on did not come into the shop until December 14, 2001. Although the claimant had explanations for the inconsistencies, the hearing officer commented that having listened to and observed the claimant "he was neither credible nor persuasive."

Although the lack of a compensable injury does not preclude the hearing officer from determining an alleged DOI, the hearing officer's failure to find a claimed DOI does not constitute reversible error, particularly since this point was not appealed.

The testimony and other evidence were in conflict in regard to the disputed issues and the evidence was sufficient to support the determinations of the hearing officer. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

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

**LEO MALO  
ZURICH NORTH AMERICA  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Veronica Lopez-Ruberto  
Appeals Judge