

APPEAL NO. 031354
FILED JULY 17, 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 23, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable (right shoulder and cervical) injury on _____; that the compensable injury does not extend to the lumbar area; and that the claimant had disability from May 9, 2002, through the date of the CCH. The hearing officer's determination that the compensable injury does not include the lumbar spine has not been appealed and has become final pursuant to Section 410.169.

The appellant (carrier) appeals the issues of injury and disability, asserting that the claimant had not proven an injury to the right shoulder and cervical areas, and that even if there was a compensable injury to the right shoulder and neck, any inability to obtain and retain employment at the preinjury wage (disability) was due to the noncompensable, preexisting lumbar injury. The claimant responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant had a long history of lumbar spine injuries including some seven surgeries. Although the claimant continued to receive treatment for her low back injuries, she was able to work most of the time. The claimant testified how a "chair went backwards," causing her to fall on _____. The claimant also testified that, as she fell, she hit her right shoulder and neck on a counter. The treating doctor found cervical and shoulder strains due to the fall and that at least some of the Work Status Reports (TWCC-73) beginning in December 2002, specifically reference the cervical and shoulder injuries.

There was conflicting evidence regarding the disputed issues. However, the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). 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 **ACE PROPERTY & CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge