

APPEAL NO. 031451
FILED JULY 22, 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 May 8, 2003. The hearing officer determined that the respondent's (claimant) compensable injury of _____, extends to and includes post-traumatic seizure disorder, optic neuritis and ethmoid sinusitis.

The appellant (carrier) appeals, principally arguing that the disputed conditions require some type of head injury and that no head injury has been established. The carrier cites medical evidence from the voluminous medical reports and takes issue with some of the hearing officer's comments. The claimant responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant, a vocational adjustment counselor at a guidance center, was struck by a television set thrown from the second story of a building on _____. One of the critical issues is whether the claimant was hit in the head. The carrier accepted a cervical and right shoulder injury. The hearing officer found that the compensable _____, injury "includes injury to Claimant's head." The carrier argues that the initial medical reports do not document a head injury or that the claimant was hit in the head by the television set.

There is extensive medical evidence and much of it is conflicting. The carrier relies on the reports of three board-certified doctors (one an otolaryngologist and the other two neurologists) who submitted peer review reports. The hearing officer in his Statement of the Evidence comments that these reports "are not persuasive." The carrier also objected to the hearing officer's comment in the Statement of the Evidence that 10 years post injury the carrier is disputing the injuries for the first time. We agree with the carrier that the evidence indicates that the carrier disputed the claimed injuries in February 1995, however we consider the hearing officer's comment a misstatement and not an indication of bias as the carrier alleges. The hearing officer's misstatement does not constitute reversible error.

With the evidence in conflict it was up to the hearing officer, as the finder of fact and sole judge of the weight and credibility to be given to the evidence, to determine whether the claimant was hit in the head and suffered the claimed injuries. The hearing officer has done so and the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **EMPLOYER'S INSURANCE OF WAUSAU** and the name and address of its registered agent for service of process is

**RICK KNIGHT
105 DECKER COURT, SUITE 600
IRVING, TEXAS 75062.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica Lopez-Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge