

APPEAL NO. 031490
FILED JULY 24, 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 12, 2003. The hearing officer determined that the appellant's (claimant) _____, compensable injury does not extend to or include a hiatal hernia injury. The claimant appeals this determination. The respondent (carrier) urges affirmance for the hearing officer's decision.

DECISION

Affirmed.

Extent of injury is a factual question for the hearing officer to resolve. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record reveals that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant argues that the hearing officer did not understand the true nature of the disputed issue. According to the claimant, the disputed issue was not whether the compensable injury included her initial hernia injury; rather, it was whether the "medical treatment for the back injury caused new harm to me in the manner of compromising my hernia repair." The record reflects that the claimant initially requested that the hearing officer modify the disputed issue; however, ultimately, she declined to agree to a stipulation altering the disputed issue. In any event, it is clear that the hearing officer considered whether the _____, lifting incident caused a hiatal hernia, whether the physical therapy treatment for the compensable injury caused a hiatal hernia and whether, after having hernia repair surgery, the physical therapy treatment for the compensable injury caused a hiatal hernia injury. Because the claimant requested that the hearing officer proceed on the issue of whether the compensable injury includes a hiatal hernia injury, and because it is clear that he considered the alternative positions of the claimant, we cannot agree that the hearing officer confused the true nature of the disputed issue.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS COUNCIL RISK MANAGEMENT** and the name and address of its registered agent for service of process is

**FRANCIS FAYE
9229 WATERFORD CENTRE BOULEVARD, SUITE 100
AUSTIN, TEXAS 78758.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge