

APPEAL NO. 032190
FILED OCTOBER 1, 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 July 18, 2003. The hearing officer determined that the appellant (claimant) sustained a compensable injury on _____; that the compensable injury of _____, does not include disc protrusions at L2-3, L3-4, L4-5, and L5-S1, spondylosis at L3-4 and L4-5, and/or foraminal narrowing at L5-S1; and that the claimant does have disability as a result of the compensable injury of _____, beginning July 30, 2002, and continuing through August 2, 2002. The appellant (claimant) appeals, arguing that the hearing officer's extent-of-injury and disability determinations are against the great weight and preponderance of the evidence. The carrier has responded, urging affirmance.

DECISION

Affirmed.

At the CCH, the parties agreed to add the issue: "If Claimant sustained a compensable injury on _____, does the compensable injury include disk protrusions at L2-3, L3-4, and L5-S1 and/or spondylosis at L3-4 and L4-5 and foraminal narrowing at L5-S1?" The claimant argues that his preexisting back injury was exacerbated by the compensable injury, resulting in those conditions which the hearing officer found not compensable. He further argues that the hearing officer erred by not finding that he had disability through the date of the CCH. The issues of whether the compensable injury included disc protrusions at L2-3, L3-4, L4-5, and L5-S1, spondylosis at L3-4 and L4-5, and/or foraminal narrowing at L5-S1; and whether and for what period(s) the claimant had disability were questions of fact for the hearing officer. Conflicting evidence was presented regarding the issues. While aggravation of a preexisting condition is compensable, the hearing officer found Dr. S testimony that before and after diagnostic studies did not show any additional harm or damage to the claimant's spine. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We have reviewed the complained-of determinations. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly

wrong and unjust. Cain, supra; In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

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

**CINDY GHALIBAS
7610 STEMMONS FREEWAY
DALLAS, TEXAS 75247.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge