

APPEAL NO. 032223
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 was held on August 5, 2003. The hearing officer determined that the appellant's (claimant) _____, compensable injury does not include the cervical spine, right shoulder, or right carpal tunnel syndrome. The claimant appeals this determination and asserts that she received inadequate assistance from the ombudsman. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Extent of injury is a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). 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 indicates 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, 176 (Tex. 1986).

The claimant asserts that she received inadequate assistance from the ombudsman. Specifically, the claimant contends that contrary to her wishes, the ombudsman did not call the claimant's treating doctor as a witness at the hearing. The claimant did not raise this issue at the hearing. To the contrary, she acknowledged on the record that she had sufficient opportunity to avail herself of the ombudsman's assistance in preparing for the hearing and that she wished to proceed with the ombudsman's assistance. Furthermore, we note that the ombudsmen are available only to assist claimants and it is the claimant who is responsible for the proper and adequate presentation of her case. We also note that the treating doctor's reports were offered and admitted into evidence, and that the hearing officer considered those reports.

The hearing officer's decision and order is affirmed.

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

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Chris Cowan
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge