

APPEAL NO. 032381
FILED OCTOBER 14, 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 25, 2003. The hearing officer determined that the appellant's (claimant) compensable right shoulder injury of _____, does not include a temporomandibular joint (TMJ) disorder.

The claimant appeals, contending that during intubation for a second surgery for the compensable right shoulder injury his "jaw was overextended resulting in TMJ." The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant had two surgeries for a compensable right shoulder injury. The claimant's second surgery was on August 31, 2001, and the claimant contends that during that surgery his jaw was forced open for intubation resulting in the claimed TMJ. The hearing officer notes that records of the designated doctor prior to the second surgery notes right jaw displacement. The medical opinions on causation are conflicting and the reports can be interpreted to say different things. The hearing officer found that "[o]bjective evidence of a hyperextension of the jaw is lacking."

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 the evidence. 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). Although there is conflicting medical evidence we conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**RICHARD A. MAYER
11910 GREENVILLE AVENUE, SUITE 600
DALLAS, TEXAS 75243.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge