

APPEAL NO. 032653  
FILED NOVEMBER 20, 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 September 9, 2003. The hearing officer determined that the compensable injury of \_\_\_\_\_, includes a torn rotator cuff after May 14, 2003. The appellant (carrier) appeals on sufficiency of the evidence grounds and asserts that the hearing officer erred in placing the burden of proof on the carrier. The respondent (claimant) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the compensable injury of \_\_\_\_\_, includes a torn rotator cuff after May 14, 2003. The Appeals Panel has held “[w]hether or not the words ‘sole cause’ are used during a CCH, a carrier that wishes to assert that a current condition and incapacity results only from conditions in existence prior to an intervening accident [or, for that matter, an event occurring after the accident] bears the burden of proving that the preexisting [or subsequent] condition is the sole cause.” See Texas Workers' Compensation Commission Appeal No. 030790, decided May 19, 2003; Texas Workers' Compensation Commission Appeal No. 001209, decided July 10, 2000, citing Texas Employers Insurance Association v. Page, 553 S. W. 2d 98, 100 (Tex. 1977); Texas Workers' Compensation Commission Appeal No. 92068, decided April 6, 1992. Whether the claimant's current condition resulted from an incident on May 14, 2003, was a question of fact 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, as the trier of fact, 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)). In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer erred nor is the determination 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).

decision and order of the hearing officer are affirmed.

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

**STEVE ROPER  
1616 SOUTH CHESTNUT STREET  
LUFKIN, TEXAS 75901.**

---

Edward Vilano  
Appeals Judge

CONCUR:

---

Gary L. Kilgore  
Appeals Judge

---

Robert W. Potts  
Appeals Judge