

APPEAL NO. 032986
FILED DECEMBER 15, 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 October 21, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____; and that as a result of her compensable injury, the claimant had disability from May 12 through May 13, 2003; from May 21 through June 9, 2003; and from June 11, 2003, through the date of the CCH. The appellant (self-insured) appeals, contending that the hearing officer's determinations are against the great weight and preponderance of the evidence. The self-insured asserts that the claimant failed to prove the existence of any injury, that the claimant's symptoms are preexisting, and that the claimant has not had disability because she failed to prove she has a compensable injury. The claimant responds that she did sustain a work-related injury on _____, and that she was unable to work due to that injury.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained a compensable injury as defined by Section 401.011(10) and that she had disability as defined by Section 401.011(16). The claimant testified that she was performing her work activities on _____, when she felt a pop in her right shoulder while getting a box down. The self-insured asserts that the claimant has experienced only symptoms from a preexisting condition. However, the claimant's treating doctor reported that the claimant's prior right upper extremity condition appeared to have been resolved and that the claimant sustained a new injury while working on _____. The self-insured also asserts that the claimant did not establish that she sustained any damage or harm to the physical structure of her body in the claimed work-related incident, but experiences only pain. The evidence reveals otherwise because the claimant's treating doctor has diagnosed the claimant as having a right upper extremity sprain and right upper extremity tendonitis as a result of the work-related incident of _____. Other diagnoses also appear in the record. With regard to disability, the hearing officer's determination on that issue is supported by the claimant's testimony and the reports of the treating doctor.

The self-insured correctly notes that the disputed issue regarding whether the claimant sustained a compensable injury referenced a date of injury of May 7, 2003. The May 7, 2003, date was noted in the benefit review conference (BRC) report. There are references in the exhibits to both a May 7 and a _____, date of injury. The claimant testified that her work-related injury occurred on _____, and that testimony is consistent with the reports of the treating doctor, as well as the date of injury that the self-insured wrote on its Payment of Compensation or Notice of Refused

Disputed Claim (TWCC-21) dated May 20, 2003, the Employer's Wage Statement (TWCC-3) dated May 21, 2003, and the Supplemental Report of Injury (TWCC-6) dated May 20, 2003. In Texas Workers' Compensation Commission Appeal No. 981141, decided July 15, 1998, the Appeals Panel stated: "A hearing officer is not bound by the date of injury set forth in a BRC report if the evidence at the CCH indicates otherwise." See *also* Texas Workers' Compensation Commission Appeal No. 92022, decided March 9, 1992 (the date alleged does not have to be the date found by the hearing officer as the date of injury, and the hearing officer is charged with considering all the evidence to determine when the injury occurred). In view of the evidence presented at the CCH, and our prior decisions regarding date of injury, we do not find that the hearing officer erred in determining that the claimant's compensable injury occurred on _____, as testified to by the claimant and as supported by various reports and documents in evidence.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case on the disputed issues of compensable injury and disability, we conclude that the hearing officer's determinations on those issues are supported by sufficient evidence and are 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 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge