APPEAL NO. 033259
FILED JANUARY 27, 2004

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 17, 2003, and concluded on November 21, 2003. The hearing officer determined that the claimant's right shoulder contusion injury of _____ (all dates are 2003 unless otherwise noted), does not extend to and include injuries to the left shoulder, left arm and upper back, and that the claimant did not have disability.

The appellant (claimant) appeals, and after summarizing some of the evidence, asserts that the hearing officer's decision is against the great weight and preponderance of the evidence and that the hearing officer "does not offer any meaningful explanation or incite [sic] as to why or in what way Claimant's evidence was not sufficient." The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a "multi-craft finisher" with duties which included painting the inside of railroad tank cars. Although the claimant had been receiving treatment for bilateral shoulder pain for two years prior to the date of injury, the claimant continued to perform his heavy physically demanding job. It is relatively undisputed that on the morning of May 12 as the claimant was climbing down into a tank car he slipped and fell striking at least his right shoulder on the side of the tank car. Much of the other evidence is disputed including whether the claimant hit his left shoulder and/or "fell on his head." The carrier accepted a right shoulder contusion injury. The following day the claimant was seen by Dr. G, a doctor to which the claimant was sent by the employer. Dr. G examined the claimant (the thoroughness of the exam is disputed) and released the claimant to return to work without restrictions. Although the claimant worked on May 14 and 15, in dispute is whether the claimant worked regular duty or some sort of informal modified duty. After a meeting on May 16, wherein the claimant complained that he was unable to perform his regular duties, the claimant returned to Dr. G for a follow-up exam on May 19. At that time the claimant was again released to full duty without restrictions. The claimant subsequently changed doctors to his treating chiropractor who placed the claimant in a light duty status with no overhead reaching. In evidence are DVD and videotapes taken on September 6 and 7 and October 1 and 2 showing the claimant performing normal activities of daily living.

Conflicting evidence was presented at the CCH with regards to the extent of the injury and disability. Those issues presented questions 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). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Regarding

the claimant's appeal that the hearing officer did not provide "any meaningful explanation" for his decision, fairly clearly the hearing officer did not find the claimant's testimony credible and gave Dr. G's testimony and the surveillance videos greater weight than the reports of the treating chiropractor. We conclude that 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 v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Robert W. Potts
Appeals Judge