

APPEAL NO. 033263
FILED FEBRUARY 9, 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 was held on November 20, 2003. With respect to the issue before him, the hearing officer determined that the appellant's (claimant) compensable injury of _____, extends to and includes a right lateral disc herniation at L5-S1, but not dextroscoliosis, spondylolisthesis at L4-5, a herniated disc at L4-5, disc desiccation at T7-8, or thoracic scoliosis. In his appeal, the claimant essentially argues that the hearing officer's determination that his compensable injury does not extend to include dextroscoliosis, spondylolisthesis at L4-5, a herniated disc at L4-5, disc desiccation at T7-8, or thoracic scoliosis is against the great weight of the evidence. The appeal file does not contain a response to the claimant's appeal from the respondent (carrier).

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not extend to and include dextroscoliosis, spondylolisthesis at L4-5, a herniated disc at L4-5, disc desiccation at T7-8, or thoracic scoliosis. The claimant had the burden of proof on the extent-of-injury issue and it presented a question of fact for the hearing officer. There was conflicting evidence presented on the disputed issue. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As such, the hearing officer was required to resolve the conflicts and inconsistencies in the evidence and to determine what facts the evidence established. In this instance, the hearing officer simply was not persuaded that the claimant sustained his burden of proof on the extent-of-injury issue. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record reveals that the challenged determination is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb the determination that the claimant's compensable injury does not extend to or include dextroscoliosis, spondylolisthesis at L4-5, a herniated disc at L4-5, disc desiccation at T7-8, or thoracic scoliosis on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

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he hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION** for **Paula Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLEY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge