

APPEAL NO. 033374  
FILED JANUARY 22, 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 19, 2003. With respect to the issues before him, the hearing officer determined that the respondent's (claimant) compensable injury of \_\_\_\_\_, extends to and includes left shoulder impingement and that the claimant had disability from October 1, 2002, through the date of the hearing. In its appeal, the appellant (carrier) challenges those determinations as being against the great weight of the evidence and also contends that the hearing officer "failed to review the exhibits in this case." In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in making his extent-of-injury and disability determinations. 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 and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was persuaded by the evidence that the claimant sustained his burden of proving that his compensable injury includes left shoulder impingement and that he had disability from October 1, 2002, through the date of the hearing. The factors emphasized by the carrier in challenging those determinations on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in resolving the issues before him. Nothing in our review of the record reveals that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In its appeal, the carrier argues that the hearing officer did not review the exhibits in this case. In his Statement of the Evidence, the hearing officer stated that "[i]t is unknown why an EMG of the upper extremities has not been done to this point considering the consistent, credible complaints of Claimant since the date of injury." However, as the carrier notes, Claimant's Exhibit No. 7 contains a report from Dr. H demonstrating that a monopolar needle EMG was performed on the claimant's left upper extremity on October 31, 2002, which was interpreted as being normal. Although the hearing officer clearly overlooked this piece of evidence, we cannot agree that he committed reversible error in doing so in that the evidence is not determinative of the issue. There was other normal diagnostic testing in this case and nevertheless, Dr. H and Dr. M consistently diagnosed left shoulder impingement. The hearing officer was

free to rely on the evidence from Dr. H and Dr. M, in conjunction with the claimant's testimony, and to resolve the extent-of-injury issue in favor of the claimant, and he did so. Because we do not believe that the hearing officer's consideration of the EMG evidence is likely to result in his changing his resolution of the issues before him, we will not remand for him to consider the piece of evidence he obviously failed to consider.

The hearing officer's decision and order are affirmed.

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

**ROBIN MOUNTAIN  
ACE USA  
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200  
IRVING, TEXAS 75063.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge