APPEAL NO. 040449
FILED APRIL 12, 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 January 28, 2004. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) compensable injury does not include a non-union of the left carpal navicular in a post-operative state with residuals, and that he did not have disability as a result of his compensable injury. In his appeal, the claimant argues that the hearing officer's extent-of-injury and disability determinations are against the great weight and preponderance of the evidence. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury does not include a non-union of the left carpal navicular in a post-operative state with residuals. The claimant had the burden of proof on that 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 proving that the compensable injury aggravated the preexisting non-union fracture in his left wrist. The hearing officer explained why she rejected the evidence tending to demonstrate a causal connection between the claimant's work-related injury and the condition in the claimant's left wrist that necessitated surgery. The hearing officer was acting within her 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 hearing officer's extent-of-injury determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

It is undisputed that the disability period claimed by the claimant was related to the surgery and recovery period for the non-union of the left carpal navicular. Given our affirmance of the hearing officer's determination that the compensable injury does not extend to and include that condition, we likewise affirm her determination that the claimant did not have disability.

Finally, we note that in his appeal, the claimant asserts error in Finding of Fact No. 5 where the hearing officer states that on the date of injury the claimant's residence was located within 75 miles of the (City 1) Local Office of the Texas Workers' Compensation Commission. We note additionally, that the claimant did not assert error

in the hearing officer's legal conclusion that venue was proper in (City 1). Apparently, the claimant lived in (City 2) on the date of injury. However, at the hearing, the claimant acknowledged that he currently lives in (City 1) and the return address on the envelope in which the claimant mailed his appeal also lists a (City 1) address. Thus, it would appear that good cause would exist to hold the hearing in (City 1) and we perceive no reversible error in the hearing officer's venue determination.

The hearing officer's decision and order are affirmed.

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

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Edward Vilano
Appeals Judge