

APPEAL NO. 040718
FILED MAY 13, 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 February 4, 2004. With respect to the single issue before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to include central canal stenosis from C3 through C5, myelomalacia at C3-4, a disc bulge pressing on the anterior thecal sac at C5-6, degenerative disc disease at C5-6, disc desiccation and endplate spurring at C5-6, C2-3 disc protrusion, C3-4 endplate spondylosis, C4-5 cord central disc protrusion, C5-6 right paracentral disc protrusion with endplate spur, C6-7 broad mixed spondylitic protrusion, C7-T1 bilateral posterior facet arthropathy and hypertrophic bone spurring, and an L5-S1 posteriolateral protrusion. In his appeal, the claimant argues that the hearing officer's extent-of-injury determination is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed as reformed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not extend to include the conditions at issue. 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 extended to the conditions at issue; rather, she believed that the claimant sustained a "fairly minor" motor vehicle accident that resulted only in cervical and lumbar sprain injuries. 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 that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Throughout the decision there are references to "central anal stenosis from C3 through C5" when it is apparent that the condition at issue was central canal stenosis at those cervical levels. The hearing officer's decision and order are modified such that every reference to anal stenosis is changed to canal stenosis.

As modified, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL FIRE AND MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica L. Ruberto
Appeals Judge