

APPEAL NO. 041033  
FILED JUNE 23, 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 April 6, 2004. The hearing officer determined that the respondent's (claimant) date of injury was \_\_\_\_\_; that the claimant did sustain a compensable injury in the form of an occupational disease type injury; that the claimant timely notified the employer of a work-related injury pursuant to Section 409.001 and the appellant (carrier) is not relieved of liability for the claim pursuant to Section 409.002, and that the compensable injury does extend to and include both a right shoulder injury and a cervical spine injury.

The carrier appeals, contending that the hearing officer's decision and order is not supported by the evidence and is so against the great weight and preponderance of the evidence as to be unfair and manifestly unjust. The carrier argues that because the hearing officer failed to list any of the exhibits admitted into evidence, he may have made findings of fact on something other than the testimony offered at the hearing. The claimant responds, urging affirmance.

DECISION

Affirmed.

Section 410.168(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(a) (Rule 142.16(a)) require only that the hearing officer make findings of fact, conclusions of law, determine whether benefits are due, and award benefits. Accordingly, witness/exhibit lists and summaries of the testimony of each witness are not required in a decision and order. In the present case, the transcript of the hearing proceeding reflects that the hearing officer admitted Claimant's Exhibits Nos. 1 through 7 and Carrier's Exhibits A through H. Although the hearing officer did not list any exhibits under the "Background Information" portion of the Decision and Order, it is clear that he considered them because he discussed several of the exhibits. Therefore, we cannot agree that the hearing officer's decision was not based on the evidence or that the decision is improper.

Injury, date of injury, reporting of the injury, and extent of injury are factual questions for the fact finder to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence has established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). There is sufficient evidence to support the hearing officer's determinations. The claimant

testified about the nature of his job, that he started feeling pain in his shoulder sometime in April or May 2002, that he reported his pain to his supervisor and was allowed to visit the employer's nurse a few times for treatment; and, that the nurse finally asked whether he wanted to see a doctor. He also testified that he kept working at the request of his supervisor despite his pain. The hearing officer found the claimant's testimony credible as opposed to the testimony from the employer's supervisor. A report from the treating doctor dated March 11, 2003, also supports the injury determination, specifically mentioning that the claimant was experiencing pain and had developed an impingement syndrome as a direct result of the injury. Conflicting evidence was presented on the disputed issues. As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. 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 **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge