

APPEAL NO. 041395  
FILED JULY 28, 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 May 12, 2004. The hearing officer resolved the disputed issues by determining that the compensable injury does include left shoulder MRI findings dated August 9, 2003 (1. Abnormal signal intensity in the distal portion of the rotator cuff tendon suggesting rotator cuff tear. 2. Mild joint effusion. 3. Narrowing of the acromiohumeral distance can be associated with shoulder impingement syndrome); but not cervical spine MRI findings dated August 9, 2003 (1. Spondylosis in cervical spine at C5 and C6. 2. Degenerative disk disease throughout cervical spine. 3. Mild posterocentral herniated disk C4/C5 [sic]. 4. Mild extradural defect at C5-C6 by bone osteophyte); or lumbar spine MRI findings dated August 9, 2003 (1. Degenerative disk disease with mild posterocentral herniated disk L5-S1. 2. Minimal degenerative changes in the lumbar spine); and that the appellant (claimant) did not have disability from April 9, 2003, through April 5, 2004. The claimant appealed, disputing the cervical and lumbar extent-of-injury and disability determinations. The respondent (carrier) responded, urging affirmance. The determination that the compensable injury includes the left shoulder MRI findings was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable left shoulder sprain/strain on \_\_\_\_\_. At issue was whether the claimant's compensable injury extended to include the August 9, 2003, shoulder, cervical and lumbar MRI findings and whether the claimant had disability resulting from the compensable injury. These issues presented questions of fact for the hearing officer to resolve. The hearing officer noted that she found the claimant's testimony to be inconsistent and contradicted by the documentary evidence.

The hearing officer is the trier of fact and the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer was persuaded that the claimant's compensable injury extended to include the left shoulder MRI findings dated August 9, 2003, but not the cervical and lumbar MRI findings of the same date and that the claimant did not sustain his burden of proving that his compensable injury was a cause of his inability to obtain and retain employment at his preinjury wage.

Nothing in our review of the record reveals that the hearing officer's determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the extent-of-injury and disability determinations on appeal. Cain, *supra*.

We affirm the decision and order of the hearing officer.

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

**RICK KNIGHT  
105 DECKER COURT, SUITE 600  
IRVING, TEXAS 75602.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge