

APPEAL NO. 041419  
FILED AUGUST 2, 2004

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 27, 2004. The hearing officer determined that the appellant's (claimant) \_\_\_\_\_, compensable injury does not include a bilateral shoulder injury. The claimant appealed the hearing officer's extent-of-injury determination on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance. The Appeals Panel remanded the matter back to the hearing officer to consider newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 040398, decided April 14, 2004. A CCH was held on remand on May 11, 2004. The hearing officer admitted additional documentary evidence which was offered by the claimant without objection from the carrier. The hearing officer issued a decision and order on remand again determining that the claimant's \_\_\_\_\_, compensable injury does not include an injury to the bilateral shoulders. The claimant appealed on sufficiency of the evidence grounds and the carrier responded, urging affirmance.

DECISION

Affirmed.

We have reviewed the complained-of determination and find that the hearing officer's decision and order on remand are supported by sufficient evidence to be affirmed. We are satisfied that the hearing officer reviewed and considered all of the evidence in reaching her determination on the disputed issue. The disputed issue presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed issue. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). The hearing officer was not persuaded that the claimant's job activities were sufficiently repetitive so as to cause the claimant's bilateral shoulder injuries. Nothing in our review of the record reveals that the hearing officer's determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. This is so even though a

different fact finder could have come to a different result based upon the same evidence. As such, no sound basis exists for us to reverse that determination on appeal. 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 **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION  
350 NORTH ST. PAUL STREET, SUITE 2900  
DALLAS, TEXAS 75201.**

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Daniel R. Barry  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge