

APPEAL NO. 041434
FILED JULY 21, 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 26, 2004. With respect to the issue before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to and include the May 27, 2003, cervical spine MRI findings (small central disc herniation/protrusion at C4-5 and C5-6 levels). In her appeal, the claimant argues that the hearing officer's determination is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not extend to and include the May 27, 2003, cervical spine MRI findings (small central disc herniation/protrusion at C4-5 and C5-6 levels). 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 on the issue of whether the claimant's compensable injury included the C4-5 and C5-6 disc herniations/protrusions. 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 her burden of proving the causal connection between her compensable injury and the herniations/protrusions at C4-5 and C5-6. 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).

In her appeal, the claimant contends "that the Hearing Officer made the decision based on a burden of proof more strict than a preponderance of the evidence as mandated by § 410.303." The claimant does not point to anything specific to support the assertion that the hearing officer imposed a stricter standard than a preponderance of the evidence standard and after reviewing the record we find no support for the assertion.

The hearing officer's decision and order are affirmed.

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

**RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica L. Ruberto
Appeals Judge