

APPEAL NO. 041601  
FILED AUGUST 19, 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 June 22, 2004. The hearing officer determined that: (1) the compensable injury of \_\_\_\_\_, does not extend to and include the bilateral shoulders; and (2) the appellant (claimant) had an average weekly wage (AWW) of \$672.15, in accordance with the parties' stipulation. The claimant appeals the extent-of-injury determination on sufficiency of the evidence grounds and argues that the carrier should be "estopped from disputing this claim after paying for over two years and never once filing a [Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21)]." The respondent (carrier) urges affirmance. The hearing officer's AWW determination was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the compensable injury of \_\_\_\_\_, does not extend to and include the bilateral shoulders. This determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is 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).

With regard to the claimant's equitable estoppel argument, we acknowledge that the Appeals Panel has recognized an "element of estoppel," an equitable principle, in some cases in order to preserve the integrity of the system and to prevent a party from taking unfair advantage. See, e.g. Texas Workers' Compensation Commission Appeal No. 980101, decided March 4, 1998. We do not believe that equitable relief is appropriate under the circumstances of this case.

The decision and order of the hearing officer is affirmed.

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

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Chris Cowan  
Appeals Judge