APPEAL NO. 041839
FILED SEPTEMBER 16, 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 July 2, 2004. The hearing officer determined that the respondent's (claimant herein) compensable injury (a sprain/strain) of _____, extends to include herniation at C4-5 and C6-7 but does not extend to include spondylosis at C4-5 or C6-7. The determination that the compensable injury does not include spondylosis has not been appealed and has become final pursuant to Section 410.169.

The appellant self-insured (carrier herein) appeals the other extent determination, contending that there is no casual link between the claimant's claimed conditions and the compensable injury or that the compensable injury aggravated the claimant's preexisting conditions. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that she sustained a compensable injury using a three hole punch when on "one of the down thrusts" of the hole punch she felt "tremendous sharp pain in [her] neck." The carrier accepted a cervical sprain/strain. There is conflicting evidence whether the claimant has disc bulges and paracentral disc protrusion or whether those conditions amount to herniations. The treating doctor diagnosed "cervical HNP at C4-5 with upper extremity radiculopathy." A carrier-required medical examination (RME) doctor is of the opinion that the claimant has preexisting cervical degenerative disc disease not caused by the compensable injury and commented that it "is medically improbable that using the hole punch would cause the degenerative changes." The hearing officer comments that the fact that the carrier accepted a sprain/strain goes a long way to diffuse the RME doctor's contention that the claimed mechanism of the injury was implausible.

Conflicting evidence was presented on the disputed issue and presented 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). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had 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 of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence in favor of the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly

unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.

For service by mail the address is:

JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge