

APPEAL NO. 950138

This appeal is considered under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 15, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as hearing officer, to consider the single issue of whether appellant's (claimant) right shoulder injury was a result of the (date of injury), compensable injury. The hearing officer determined that claimant's right shoulder injury was the result of a prior workers' compensation injury and not the (date of injury), compensable injury. Claimant appealed, arguing that the hearing officer's determination was against the great weight of the evidence. In its response, respondent (carrier) urges affirmance.

DECISION

We affirm.

On (date of injury), claimant was employed by (employer) and had been so employed for 11 months. Claimant testified that on (date of injury) she was working as a machine operator and some pieces got stuck in the machine. As she was attempting to get the pieces out of the machine, she twisted the third finger on her right hand and hit her right wrist on the machine. Claimant said that after the (date of injury) incident, she had pain in her right hand, wrist, arm and shoulder. It is undisputed that claimant sustained a compensable injury on (date), while working for the same employer, which included her right shoulder. Claimant testified that she continued to work after the (date) injury; however, she apparently was working in a light duty position. Claimant testified that the pain in her right shoulder became worse after the (month year) injury. She stated that she had surgery on her right shoulder in September 1993 and although her pain has decreased as of the date of the hearing, she had lost the strength in her right arm. On cross-examination, claimant acknowledged that she was receiving treatment for her right shoulder as a result of the (date) injury at the time of the (month year) injury and that she received that treatment from (Dr. K) and (Dr. B).

After the (month year) injury, claimant appears to have initially received treatment from Dr. K at D Inn, to whom she was apparently referred by the employer. Medical records from Dr. K dating from March 18 to March 31, 1993, reflect a diagnosis of sprain/strain of the right hand. None of Dr. K's medical records admitted in evidence here refer to right shoulder pain. In April 1993, claimant changed treating doctors to Dr. B. In an Initial Medical Report (TWCC-61) dated April 6, 1993, listing a date of injury of (date of injury), Dr. B diagnosed a contusion injury to the right wrist and carpal tunnel syndrome (CTS). He also indicated that he had to rule out right wrist dislocation. There is no reference to shoulder pain in Dr. B's TWCC-61. In fact, throughout claimant's treatment with Dr. B he continued to list a right wrist contusion injury and CTS as his diagnosis related to the (month year) injury. In addition, although there are references to right shoulder pain in Dr. B's records, there is no statement attributing that pain to the (month year) injury.

Claimant was examined by (Dr. H) at the request of the Texas Workers' Compensation Commission (Commission) for purposes of determining maximum medical improvement (MMI) and assigning an impairment rating (IR). In a Report of Medical Evaluation (TWCC-69) and an accompanying narrative report, Dr. H determined that claimant reached MMI for purposes of the (month year) injury on August 10, 1993, with an IR of three percent. In his narrative report, Dr. H specifically stated:

[Claimant] has had an EMG for her prior right shoulder injury which occurred 7-24-92. This has been evaluated and she had an arthroscopic procedure for this. This is not related to her current work-related injury.

Finally, claimant's physical therapy progress notes dating from September 1992 to January 1993 reference right shoulder pain related to the (date) injury and note that the right shoulder pain became more severe in November 1992.

Under the 1989 Act, the claimant has the burden of proving the extent of his injury. Texas Workers' Compensation Commission Appeal No. 94232, decided April 11, 1994. That question is generally one of fact to be resolved by the hearing officer. The hearing officer is the sole judge of the weight, credibility, relevance and materiality of the evidence. Section 410.165(a). As the fact finder, the hearing officer is charged with the responsibility for resolving the conflicts in the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer can believe all, part, or none of the testimony of any witness and can properly decide what weight to assign to the other evidence before her. Campos, supra. We do not substitute our judgment for that of the hearing officer where her determinations are supported by sufficient evidence. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In this instance, the hearing officer determined that claimant's right shoulder injury was not the result of the (date of injury), injury, but was instead the result of the earlier July 27, 1992, injury. There was conflicting evidence on the issue of whether claimant injured her right shoulder in the (month year) injury. It was for the hearing officer to resolve that conflict. Our review of the record indicates that there was more than sufficient evidence to permit the hearing officer to resolve the testimony and evidence in favor of a determination that claimant's right shoulder problems were not the result of the (date of injury), injury. Accordingly, no basis exists for reversing the hearing officer's decision and order on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Alan C. Ernst
Appeals Judge