

APPEAL NO. 032727
FILED DECEMBER 4, 2003

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 September 15, 2003. The hearing officer determined that the compensable injury of _____, does not extend to or include an injury to his low back. The appellant (claimant) appeals this determination on sufficiency of the evidence grounds and asserts that the hearing officer made certain medical assumptions in reaching his decision, which have no basis in the evidence. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the compensable injury of _____, does not extend to or include an injury to the low back. 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)). The hearing officer essentially determined that the claimant's evidence was not credible, given his inconsistent accounts of the mechanism of injury and delay in receiving medical treatment for the low back. 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).

As stated above, the claimant asserts that the hearing officer made certain medical assumptions in reaching his decision, which have no basis in the evidence. The hearing officer states, in the Statement of the Evidence:

The Claimant contended in the hearing that the knee was not seriously injured, and that the pain he felt was actually radicular pain radiating from his low back and down his leg to his knee. A CT scan of his low back was not performed until December 2002, some eight months after his date of injury. The L1-2 and L2-3 intervertebral levels were normal. L3-4 had a disc bulge to the right, but it did not encroach on anything to cause radicular pain down the right leg. The L4-5 level had a right-rear disc bulge, but the nerve from that level goes down to the ankle, well below the knee. The Claimant had no pain below his right knee. And the L5-S1 level had a bulge to the left, which would not affect the right leg at all.

The Claimant's argument that he had radicular pain in his knee is contradicted by anatomy. The Claimant never said he had any pain anywhere else in his right leg, except in his knee. Radicular pain radiates down a leg with pain along the entire length of the nerve. The Claimant never said a word about pain in his thigh. [Emphasis in the original.]

We view this statement as an attempt at providing an additional basis for determining the lack of credibility of the claimant's evidence. While this statement may have been inappropriate, the hearing officer could, nonetheless, determine that the claimant's evidence is not credible given the claimant's inconsistent accounts of the mechanism of injury and delay in receiving medical treatment for the low back. Accordingly, we perceive no reversible error.

The decision and order of the hearing officer are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge