

APPEAL NO. 033140
FILED JANUARY 26, 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 (CCH) was held on November 12, 2003. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on _____, which includes his right shoulder, but not his right wrist, right elbow, or neck; (2) the claimant had disability beginning January 31, 2003, and continuing through the date of the hearing. The appellant (carrier) appeals these determinations essentially on sufficiency of the evidence grounds and asserts that the hearing officer erred by refusing to add the issue of bona fide offer of employment (BFOE). The claimant urges affirmance.

DECISION

Affirmed.

We first address the carrier's assertion that the hearing officer erred by refusing to add an issue regarding BFOE. We note that the issue was not certified in the Benefit Review Conference (BRC) report and was opposed by the claimant. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(e) (Rule 142.7(e)) provides in pertinent part that a party may request the hearing officer to include in the statement of disputes one or more disputes not identified as unresolved in the BRC report, such request shall be sent to the Texas Workers' Compensation Commission no later than 15 days before the hearing, and the hearing officer will allow such amendment only on a determination of good cause. The carrier represented that the BFOE issue did not arise until after the BRC, when the employer made an offer of employment to the claimant. The record reflects, however, that the offer of employment was made on October 7, 2003, more than 30 days prior to the hearing, and the carrier failed to submit a written request for addition of the issue no later than 15 days prior to the CCH. Additionally, we cannot agree that the claimant "waived its [sic] right to object to the addition of this issue" or that the issue is subsumed or "so closely intertwined" with the issue of disability as to require its addition. Accordingly, we cannot conclude that the hearing officer abused his discretion by refusing to add the issue. Morrow v. H.E.B. Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer did not err in making the complained-of determinations. The determinations involved questions 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 determinations are 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).

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** 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.**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge