

## APPEAL NO. 972042

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 April 2, 1997. With regard to the issue at the CCH, the hearing officer determined that the appellant (claimant) did not sustain a compensable occupational disease injury on \_\_\_\_\_. The claimant appeals and seeks a reversal of the decision. The only arguments he advances is that the hearing officer erred in denying his motion to add the issue of whether the respondent (carrier) waived the opportunity to contest the compensability of the claimant's alleged injury and that the carrier waived that right. The carrier responds, seeks an affirmance of the decision and argues that the hearing officer did not err in denying the claimant's motion. Neither party appeals the determination that the claimant did not sustain a compensable occupational disease injury on \_\_\_\_\_, and, therefore, it became final by operation of law. Section 410.169.

### DECISION

We affirm.

The hearing officer fairly summarizes the substantive facts in the decision and we adopt his rendition of the facts. We discuss only those substantive facts necessary to our decision. The facts germane to this decision are procedural in nature.

According to the January 30, 1996, benefit review conference (BRC) report, a BRC was held on January 18, 1996, on the sole issue of: "Did the claimant sustain a compensable injury in the form of an occupational disease on \_\_\_\_\_?" See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(b)(1) (Rule 142.7(b)(1)). On March 16, 1996, the claimant, who was unrepresented at the time, responded in writing to the BRC report. The claimant's response contained a request to add additional issues, including the issue of whether the carrier waived its right to contest the compensability of the alleged \_\_\_\_\_, injury.

The CCH was originally set for April 25, 1996. The claimant, who lived in another state, filed at least one motion for continuance, which the hearing officer granted. A prehearing was held on June 29, 1996, with (hearing officer 2) presiding. The claimant raised his motions for subpoenas at the prehearing, but did not raise his motion to add additional issues. The claimant attempted to address the issue of College's reporting of his injury to the Texas Workers' Compensation Commission (Commission), but hearing officer 2 ruled that the compensability of the alleged injury was the only issue being considered. Another prehearing was set for July 12, 1996, but the claimant requested and received another continuance. The second prehearing was held on October 21, 1996, before the hearing officer and the claimant had then retained counsel. At the onset of that prehearing, the hearing officer stated that the prehearing was held to address requests for subpoenas and all other prehearing matters. The claimant's attorney stated on the record that he was trying to understand exactly what the issues were and the parties discussed that the only

issue was the compensability of the claimant's alleged exposure. The hearing officer, the claimant, the claimant's counsel and the carrier's counsel then discussed the claimant's March 16, 1996, request for additional issues. The hearing officer ruled that the issue of the carrier's waiver of the right to contest the compensability of the claimant's \_\_\_\_\_, injury did not apply and essentially denied the claimant's request. A third prehearing was held on January 10, 1997, but the claimant's motion for additional issues was not discussed.

On April 4, 1997, two days after the CCH under review, the claimant's counsel sent a letter to the Commission, urging the hearing officer to rule on his motion to add additional issues. At the CCH herein, the hearing officer stated: "it's my understanding that the only issue is that--whether the claimant sustained an occupational disease on \_\_\_\_\_." Neither party objected to the framing of the single issue nor requested that additional issues be added prior to the start of the claimant's case in chief. The hearing officer then noted that there were two other claims pending and explained that the parties objected to the consolidation of the claims for consideration at the CCH, but gave the parties the opportunity to agree to consolidate the claims in the course of the CCH. During his closing argument, the claimant urged that the carrier be considered to have waived its opportunity to contest the compensability of the injury. The carrier objected to the discussion of the issue of its waiver of the right to contest compensability and argued that it was not an issue at the CCH and, therefore, was not before the hearing officer.

The hearing officer sustained the carrier's objection and notes his refusal to add an additional issue in the decision and order. In the "Statement of the Evidence" portion of the decision, he states that the parties agreed that the compensability issue was the only issue and that the claimant waived the opportunity to add the issue of the carrier's waiver of the right to contest compensability by not urging at the beginning of the CCH that it be added to the issues under consideration. We agree with the hearing officer's decision that the claimant waived his opportunity to add the issue of whether the carrier waived the right to contest compensability when he did not request to add the issue at the beginning of the CCH and when he did not object to the framing of the sole issue therein. The hearing officer did give the parties the chance to consolidate, during the CCH, other claims the claimant had outstanding, apparently for reasons of judicial economy. The record does not reflect, however, that the hearing officer gave the parties a chance to add other issues during the CCH.

A hearing officer shall consider the record of the CCH, the BRC report and the parties' response thereto. See Sections 410.163, 410.164, 410.165 and 410.168; and Rules 142.2, 142.7(a) and 142.16. "A dispute not expressly included in the statement of disputes will not be considered by hearing officer." Rule 142.7(a). The statement of disputes includes the BRC report, the parties' responses thereto and additional disputes. Rule 142.7(b). The claimant, who was unrepresented when he filed his March 16, 1996, request, may request additional disputes not in the BRC report "by contacting the commission in any manner no later than 15 days before the [CCH]." Rule 142.7(e)(2). The hearing officer "will rule on the request, and notify the parties of the ruling." Rule

142.7(e)(3). A party requesting that an issue be added must show good cause for adding the issue. Rule 142.7(a)(4).

The claimant herein had a concern with the issue of the carrier's waiver of its right to contest the compensability of the injury and requested it be added as an issue two months after the BRC. The hearing officer denied the claimant's request to add the issue of the carrier's waiver of its right to contest the compensability of the injury on October 21, 1996. We review a hearing officer's ruling on a motion for additional issues under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 941178, decided October 19, 1994. Although the hearing officer did not make a specific good cause finding, we do not conclude that the hearing officer abused his discretion in his October 21, 1996 ruling. The claimant made no attempt to show good cause for adding the issue of the carrier's waiver. The claimant waited until after the close of the evidence. Under these facts, we do not conclude that the hearing officer committed error.

The substantive determination regarding the compensability of the claimant's alleged \_\_\_\_\_, occupational disease injury became final by operation of law. The hearing officer did not commit error and, therefore, we affirm the decision in all respects.

---

Christopher L. Rhodes  
Appeals Judge

CONCUR:

---

Philip F. O'Neill  
Appeals Judge

---

Gary L. Kilgore  
Appeals Judge