APPEAL NO. 980270
FILED MARCH 26, 1998

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 January 7, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. With regard to the issues at the CCH, he determines that the respondent's (claimant) _____, compensable injury extends to his back and that the appellant (carrier) waived its opportunity to contest whether the compensable injury extends to his head and neck. The carrier appeals the issues of extent of injury to the claimant's back and the waiver of the right to contest whether the compensable injury extends to the head and neck, seeks a reversal of the decision and argues that the claimant's injury does not extend to his back and that it filed a timely Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21) contesting the compensability of his neck injury. The claimant does not respond. The hearing officer also determines in conclusion of law No 5, that the carrier did not waive its opportunity to contest whether the compensable injury extends to his back. Conclusion No. 5 is not appealed and, therefore, became final by operation of law. Section 410.169; Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(f) (Rule 142.16(f)).

DECISION

We affirm.

There is no dispute that on _____, the claimant sustained the claimed injury, that he sustained a back injury in 1993 and that in October 1993 he had an L4-L5 and L5-S1 laminectomy surgery as a result of the 1993 injury. The claimant testified at the CCH that he injured his head, neck and back when a 20-pound air filter fell on his head while he was working underneath a truck. The carrier maintains that the claimant's current back condition is related to the 1993 injury and that his claimed injury does not extend to his back. According to its request for appeal, it concedes that his injury extends to his head.

On September 21, 1995, the employer-selected doctor, Dr. F, diagnosed a contusion to the head and cervical and lumbar strains but commented that "x-rays of the skull, cervical and lumbar spine were negative for recent injury." Dr. F released the claimant to return to work. On September 25, 1995, the claimant's initial choice of treating doctor, Dr. MU, noted numbness in the cervical area, placed him on light-duty work and referred him to a neurologist, Dr. S. Dr. S conducted an electromyography (EMG), which was normal, and referred him to Dr. B. On November 9, 1995, a neurosurgeon his attorney referred him to, Dr. MA, noted a "possible lumbar disc with a right radiculopathy on the left." A December 8, 1995, magnetic resonance imaging (MRI) test revealed post-operative bulging at the L4-L5 and L5-S1 levels and bulging at the L1-2, L2-3 and L3-4 levels. An October 26, 1993, MRI showed similar bulges. On

March 7, 1996, after comparing the MRI films, Dr. B opined that "alot [sic] of this patient's problems at this time are not verifiable and in fact probably functional."

The issue of the extent of an injury is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92653, decided January 21, 1993; Texas Workers' Compensation Commission Appeal No. 92654, decided January 22, 1993. Although there was evidence of a prior back injury and the doctors disagreed as to the etiology of the claimant's present back condition, the evidence is sufficient to support the extent of injury determination. The contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We will not substitute our judgment for that of the hearing officer when the determination is not 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); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. We conclude that the extent of injury determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

The resolution of an extent of injury issue cannot predetermine the resolution of a medical benefit issue. The determination of "benefit disputes," those "regarding compensability or eligibility for, or the amount of, income or death benefits," are adjudicated by the Commission's Hearings Division. Rule 140.1. The determination of what "health care is reasonably required by the nature of the injury" is adjudicated by the Commission's Medical Review Division. Sections 408.021(a) and 413.031(a); Rule 133.305; *see also* Texas Workers' Compensation Commission Appeal No. 971653, decided October 2, 1997; Texas Workers' Compensation Commission Appeal No. 951258, decided September 13, 1995. Our decision neither affects the claimant's right to lifetime medical benefits nor any party's right to medical dispute resolution by the Medical Review Division. Section 408.021(a); Texas Workers' Compensation Commission Appeal No. 92649, decided January 6, 1993; *see also* Section 413.031; Rule 133.305; and TEX. GOV. CODE ANN. § 2001 *et seq*.

A carrier must contest the compensability of an injury on or before the 60th day after it received written notice of the injury or else it waives its right to contest compensability and is liable for payment of benefits. Section 409.021(c); Rule 124.6(b). The analysis to determine whether a carrier has timely contested compensability is essentially a two-step process. In the first step, the hearing officer must determine when the carrier was notified of the injury. Within the first step lies an analysis of the sufficiency of the notice to the carrier. A notice of injury, for the

purposes of starting the time period for contesting compensability, must be written and must fairly inform the carrier of the nature of the injury, the name of the injured employee, the identity of the employer, the approximate date of injury, and must state "facts showing compensability." Rule 124.1(a). Receipt of written notice of an injury includes receipt of an Employer's First Report of Injury or Illness (TWCC-1). Rule 124.1(a)(1). In the second step, the hearing officer must determine if the carrier contested compensability on or before the 60th day after it received notice. A carrier must timely contest the compensability of additional injuries. Texas Workers' Compensation Commission Appeal No. 950183, decided March 22, 1995.

The carrier admits to receiving a September 27, 1995, TWCC-1 on October 3, 1995, which stated that the nature of the claimant's injury was "head laceration and neck strain." It argues it did not receive written notice of the extent of the claimant's injury until 60 or fewer days before the January 3, 1996, filing of its December 29, 1995, TWCC-21. Our review of that TWCC-21 reveals that it contested "liability for back injury," without mentioning or contesting head or neck injuries. The carrier fails to advance a coherent argument as to how the evidence is insufficient to conclude it waived the opportunity to contest whether the compensable injury extends to the claimant's head and neck. We conclude that the hearing officer did not err in making the appealed waiver determination based on the undisputed facts.

The hearing officer did not err and the decision is not against the great weight and preponderance of the evidence. Therefore, we affirm.

Christopher L. Rhodes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge