

APPEAL NO. 000691

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 March 20, 2000. The appellant/cross-respondent (claimant) and the respondent/cross-appellant (carrier) entered into oral agreements at the CCH. The Decision and Order of the hearing officer indicates that the agreements are:

1. The compensable injury of _____, extends to include right knee fragmentation of the patella and virtual fracture, causing the need for surgery for additional total knee replacement on October 14, 1999.
2. The Carrier waived its right to dispute the extent of injury because it did not dispute it within sixty days.
3. The Claimant sustained disability as a result of the compensable injury of _____, beginning August 6, 1999, and continuing through August 10, 1999, and beginning September 19, 1999, and continuing through the date of the hearing.
4. The Claimant-s average weekly age [sic] was \$414.03.

The decision of the hearing officer contains the identical language. The claimant appealed; stated that her surgery occurred on October 4, 1999; and requested that the findings of fact, conclusions of law, and the decision of the hearing officer be modified to reflect that the surgery occurred on October 4, 1999. The carrier requested review, stated that at the CCH the parties agreed that it did not waive the right to contest the extent of the injury because it did so within 60 days, and requested that the Appeals Panel reverse that part of the decision of the hearing officer and render a decision that the carrier did not waive its right to dispute the extent of the injury because it did so within 60 days. A response from either party has not been received.

DECISION

We reverse the determinations concerning the waiver issue and render a decision that the carrier did not waive its right to contest the extent of the compensable injury. We reform the statements of the agreement concerning the extent of the compensable injury to state that the surgery occurred on October 4, 1999, and the statements concerning average weekly wage to state that the claimant-s average weekly wage is \$414.03 and affirm those portions of the Decision and Order as reformed. We affirm the determinations concerning disability.

A review of the record, including listening to the audiotape recording of the CCH, reveals that the surgery was performed on October 4, 1999, and that the parties orally agreed that the carrier did not waive its right to contest the extent of the compensable injury because it did so dispute within 60 days of receiving written notice.

We reverse the portions of the Decision and Order that indicate that the carrier waived its right to dispute the extent of the compensable injury because it did not dispute it within 60 days and render a Decision and Order that the carrier did not waive its right to contest the extent of injury because it did contest it within 60 days of receiving written notice of it. We reform the Decision and Order to state that the surgery occurred on October 4, 1999, and that the claimant's average weekly wage is \$414.03 and affirm those determinations as reformed. We affirm the determinations concerning disability.

Tommy W. Lueders
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Elaine M. Chaney
Appeals Judge