

APPEAL NO. 001212

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 May 8, 2000. The hearing officer determined that: (1) the respondent (carrier) did not waive its right to contest the compensability of the appellant's (claimant) injury to her cervical spine, and (2) claimant's compensable injury of _____, extends to and includes her cervical spine. The determination on extent of injury, which was in claimant's favor, was not appealed. Even though claimant prevailed at the CCH, she has appealed the carrier waiver determination on sufficiency grounds. Carrier responded that the hearing officer should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that carrier did not waive the right to contest the compensability of the cervical injury. Arguably, claimant is not aggrieved by the hearing officer's decision because she prevailed: the neck injury is compensable. Whether carrier waived the right to contest the compensability of the neck injury does not matter. We will briefly address the carrier waiver issue, however.

Section 409.021(c) provides that if an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the carrier is notified of the injury, the carrier waives its right to contest compensability. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 124.3(c) (Rule 124.3(c)), effective March 13, 2000, provides, in part, that Section 409.021 and subsection (a) of Rule 124.3 "do not apply to disputes of extent of injury." The Texas Workers' Compensation Commission (Commission) construes Section 409.021 as not providing for waiver of extent of injury. See Texas Workers' Compensation Commission Appeal No. 000784, decided May 30, 2000. Given the Commission's construction of Section 409.021 of the 1989 Act, we affirm the determination that carrier did not waive its right to contest the compensability of the cervical injury. We are affirming the carrier waiver determination for reasons other than those specified by the hearing officer. However, we may affirm on any ground supported in the record. Texas Workers' Compensation Commission Appeal No. 952013, decided January 16, 1996.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge