

APPEAL NO. 001224

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 25, 2000. The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 000432, decided April 6, 2000, remanded the case to the hearing officer to determine whether the respondent (carrier) waived its right to contest the compensability of the claimed injury to the lumbar spine by not contesting compensability within 60 days of being notified of the injury. No additional hearing was held. The hearing officer determined that the carrier did not waive its right to contest the compensability of the lumbar spine as part of the compensable injury. The appellant (claimant) appeals several findings of fact, urging that the hearing officer erred in finding that the carrier disputed the lumbar spine injury prior to having received written notice; that the hearing officer erred in finding that the claimant did not prove when the carrier received the March 21, 1997, report of Dr. L; and that the Appeals Panel should reverse the hearing officer's decision. The carrier replies that the hearing officer's decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

In Appeal No. 000432, *supra*, we affirmed the hearing officer's decision that the claimant did not suffer an injury to her lumbar spine on _____, and that the compensable injury does not extend to an injury to the lumbar spine.

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 § 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." In Texas Workers' Compensation Commission Appeal No. 000713, decided May 17, 2000, the Appeals Panel affirmed the determination of the hearing officer that the carrier did not waive its right to dispute the extent (pelvic tilt and right elbow) of the claimant's injuries because it was not required to do so. We stated that the new Rule 124.3 "gives no guidance as to what event must occur on or after its effective date in order for the rule to be applicable in a given case" and we held that the new Rule 124.3 "is applicable in those cases in which a CCH is convened on or after March 13, 2000, to address an issue of carrier waiver in the context of an extent of injury question, because it precludes the Commission [Texas Workers' Compensation Commission] from imposing a waiver after that date."

In Texas Workers' Compensation Commission Appeal No. 000784, decided May 30, 2000, a case involving a CCH held before the effective date of the new Rule 124.3, we reconsidered our holding in Appeal No. 000713, *supra*, and reversed and rendered a

decision that the carrier did not waive its right to contest the compensability of the claimed bowel and erectile dysfunction conditions. Our decision was based on the rationale expressed by the Commission in the preamble of the new Rule 124.3 to the effect that the Commission construes Section 409.021 as not providing for waiver of extent of injury.

Given the Commission's construction of Section 409.021 of the 1989 Act, as set forth in the preamble to Rule 124.3, and notwithstanding that Rule 124.3 did not become effective until March 13, 2000, we affirm the hearing officer's determination that the carrier did not waive the right to contest the compensability of the lumbar spine as part of the compensable injury.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge