

APPEAL NO. 001731

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 June 28, 2000. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to or include her left leg or lumbar spine. The claimant has appealed the decision, asserting she failed to appear at the CCH due to circumstances beyond her control and stating that she has retained an attorney and has medical evidence to support her claim that the injury includes her left leg and lumbar spine. The respondent (carrier) requests that the decision be affirmed.

DECISION

Affirmed.

A benefit review conference (BRC) was held on May 3, 2000, and the issue reported out of that BRC was:

Was the _____ compensable injury a producing cause of the claimant's left leg and lumbar spine problems?

A CCH was scheduled on the foregoing issue for June 28, 2000 and notice of the CCH was sent to the claimant at (address). The claimant did not appear at the date, time and place scheduled and the hearing officer sent a 10-day letter to the claimant at the claimant's address which stated, in part:

A proposed decision and order based on the hearing record will be prepared and may be adverse to you. You may contact this Commission [Texas Workers' Compensation Commission] office within **ten days** of the date of this letter to request that the CCH in this matter be reconvened to permit you to present evidence on the issues, and/or show good cause why you failed to attend the CCH.

The record was closed on July 10, 2000. The claimant had not responded to the 10-day letter and a decision was entered which contained the following finding of fact:

FINDING OF FACT

5. Claimant's on-the-job injury of _____ has not resulted in injury or symptomatology in Claimant's left leg and/or lumbar spine.

In a letter dated July 18, 2000, post-marked on July 25, 2000, and received by the Commission on July 27, 2000, the claimant appealed the hearing officer's decision, stating:

I am in contact now with an attorney and with a Dr. who is treating my low back and left leg pain. I was not able to keep my appointment at the Beaumont office for my other hearing, due to circumstances beyond my control.

The claimant then went on to state that she has statements regarding the etiology of her left leg and low back complaints. The envelope in which the appeal was mailed has a return address of:

(Address).

The claimant does not contend that she did not receive the BRC report or the hearing officer's 10-day letter. She gives no explanation why she failed to attend the CCH or why she failed to respond to the 10-day letter. Under the facts of this case, the hearing officer properly closed the hearing and rendered a decision based on the facts available to her, or rather on the basis of a complete lack of evidence from the claimant on which to find that the compensable injury was a producing cause of the left leg and low back complaints.

An "injury" is defined as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). Whether an injury extends to a particular member of his body is a factual matter for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. The claimant had the burden to prove the extent of her compensable injury. Texas Workers' Compensation Commission Appeal No. 960733, decided May 24, 1996. By failing to appear, and failing to request an opportunity to present evidence on the disputed issue, the claimant failed to meet her burden to prove that her compensable injury extended to her left leg and lumbar spine.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). With no evidence before her which would tend to establish a causal connection between the compensable injury and the claimant's left leg and lumbar spine problems, whatever they might be, the hearing officer was constrained to conclude that the compensable injury was not a producing cause of the left leg and lumbar spine problems.

There being no reversible error, the decision of the hearing officer is affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge