

APPEAL NO. 010951  
FILED JUNE 13, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 11, 2001. With respect to the issue before him, the hearing officer determined that the appellant's (claimant) compensable injury of \_\_\_\_\_, did not extend to and include the lumbar spine; that the respondent (carrier) did not waive the right to contest compensability of the low back; and that the claimant's impairment rating (IR) is 27%, as certified by the designated doctor for the cervical injury. In his appeal, the claimant contends that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury did not extend to the lumbar spine. Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that 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. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and to determine what facts the evidence has established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In this instance, there was conflicting evidence on the issue before the hearing officer. The hearing officer resolved that conflict against the claimant and he was acting within his province as the fact finder in so doing. Nothing in our review of the record demonstrates that the hearing officer's determination that the claimant's compensable injury does not extend to or include the lumbar spine is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to disturb the hearing officer's extent-of-injury determination on appeal.

The hearing officer likewise did not err in determining that the carrier did not waive the right to contest a lumbar injury. The claimant contends that the issue before the hearing officer was not an extent-of-injury issue but was instead a compensability issue. We find no merit in this assertion. The carrier accepted a \_\_\_\_\_, compensable injury to the claimant's cervical and thoracic spine. The issue before the hearing officer in this case was whether the claimant also injured his lumbar spine at that time. That type of issue is treated as an extent-of-injury issue and in accordance with Tex. W.C. Comm'n,

28 TEX. ADMIN. CODE § 124.3 (Rule 124.3) carrier waiver does not apply to extent of injury.

Finally, we find no merit in the assertion that the hearing officer erred in determining that the claimant's IR is 27%, rather than the 33% certified by the designated doctor. By definition, an IR is only to be assigned for the compensable injury. Section 401.011(24). A review of the designated doctor's report demonstrates that the claimant's 33% IR was comprised of 27% for the cervical spine and 8% for the lumbar spine. Because the hearing officer determined that the compensable injury did not extend to the lumbar spine, and we affirmed that determination, we find no merit in the assertion that he erred in giving presumptive weight to only the portion of the designated doctor's rating assigned for the compensable injury, namely the 27% assigned for the cervical spine.

The hearing officer's decision and order are affirmed.

---

Elaine M. Chaney  
Appeals Judge

CONCUR:

---

Michael B. McShane  
Appeals Judge

---

Robert W. Potts  
Appeals Judge