

APPEAL NO. 011412  
FILED AUGUST 9, 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 June 7, 2001. He determined that the respondent's (claimant) distal ulnar fracture or fragment is a part of the \_\_\_\_\_, compensable injury. The appellant (carrier) contends that the hearing officer "impermissibly entered an order and decision exceeding the scope of the issue presented" for resolution. The appeals file contains no response from the claimant.

DECISION

Affirmed.

At issue in this case is whether the hearing officer entered an order which exceeds the scope of the issue presented to him for resolution as agreed to by the parties, namely, "[i]s the current diagnosis of the distal ulnar fracture of the left wrist a part of the \_\_\_\_\_, compensable injury?". The hearing officer determined that the "[d]istal ulnar fracture or fragment is a part of the November 2, 1996 compensable injury. [Emphasis added.]" We cannot agree with the carrier that by adding the phrase "or fragment" in the Conclusion of Law No. 2, the hearing officer exceeded the scope of the issue initially presented to him for resolution. A radiological report dated February 9, 2001, states, in part, that "there is no evidence of active healing of the distal ulnar fracture with the fracture fragments distracted from each other." Based on this report, it would appear that the inclusion of the phrase "or fragment" in the hearing officer's Conclusion of Law No. 2 constitutes a clarification of the type of fracture, but does not exceed the scope of the disputed issue. We are satisfied that the hearing officer's determination is sufficiently supported by the evidence. The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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Phillip F. O'Neill  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge