

APPEAL NO. 011509
FILED AUGUST 20, 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 March 28, 2001, and May 29, 2001. The hearing officer determined that appellant (claimant) did not sustain a compensable right hip, left upper extremity, and neck injury in addition to his compensable back injury of _____; and that respondent (carrier) did not waive the right to contest the compensability of the neck injury. Claimant appealed these determinations on sufficiency grounds. Carrier responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

We have reviewed the complained-of determination regarding extent of injury and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Regarding carrier waiver, claimant contended that Rule 124.3 (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3) does not apply because that rule discusses extent of injury and "not the injury itself." However, neither the preamble to Rule 124.3 nor our Appeals Panel decisions interpreting that rule support claimant's assertion. See Texas Workers' Compensation Commission Appeal No. 001364, decided July 24, 2000. The hearing officer did not err in determining that carrier did not waive the right to contest additional injuries to the right hip, left upper extremity, and neck because this was an issue regarding the extent of the compensable injury. Pursuant to Rule 124.3(c), a carrier does not waive the right to contest the issue of extent of injury by failing to contest compensability within 60 days of the date it receives written notice of additional claims of injury. Claimant also cites Downs v. Continental Casualty Company, 32 S.W.3d 260 (Tex. App.-San Antonio 2000, pet. filed) in support of his contention regarding carrier waiver of the right to contest the neck injury. However, in this case, we would note that carrier had accepted claimant's back injury, and the two Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21s) later filed by carrier concerned the extent of claimant's injury. Texas Workers' Compensation Commission Appeal No. 002715, decided December 27, 2000. We perceive no error.

We affirm the hearing officer's decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge