

APPEAL NO. 011631
FILED SEPTEMBER 5, 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 May 29, 2001. With respect to the issues before him, the hearing officer determined that: (1) the compensable injury of the respondent (claimant) extends to and includes his cervical spine (C5-6 herniated nucleus pulposus); (2) the agreement signed by the parties on January 19, 2001, is effective and binding; and (3) claimant reached maximum medical improvement (MMI) on March 26, 2001, with an impairment rating (IR) of 24%. The appellant (carrier) contends that the hearing officer erred as a matter of law in finding that the agreement is effective and binding. Carrier also argues that the determinations that the compensable injury extends to and includes the cervical spine and that claimant's IR is 24% are against the great weight and preponderance of the evidence. Claimant urges affirmance.

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). Carrier also asserted that the evidence does not support a finding that the claimant sustained an aggravation of a preexisting cervical spine injury. The reason for making this argument is unclear because although the hearing officer found that the compensable injury extends to and includes the cervical spine, he did not make a finding that there was an aggravation of a preexisting injury. We perceive no error.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 147.4 (Rule 147.4), and Sections 410.029 and 410.030 support the hearing officer's determination that the agreement signed by the parties on January 19, 2001, is effective and binding. We perceive no error in this regard. In any case, the hearing officer determined that the compensable injury extends to the cervical injury and we have affirmed this determination. Therefore, the issue regarding whether the parties agreed regarding extent of injury is effectively moot. Regarding carrier's assertion that the designated doctor did not properly apply the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association, we note that carrier has raised this for the first time on appeal. Therefore, carrier has waived any possible error. Carrier also contends that the 24% IR is incorrect because it includes impairment for the cervical spine. We have affirmed the hearing officer's determination regarding extent of injury, so there is no error in this regard.

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