

APPEAL NO. 012078
FILED OCTOBER 17, 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 July 30, 2001. The hearing officer resolved the disputed issues by determining that the respondent's (claimant) injury of _____, extends to and includes his low back pain and muscle spasm due to compensations for the compensable injury of _____; that the claimant's back problems amount to symptoms, not an injury producing a permanent condition; that the claimant's impairment rating is 15% as assessed by the designated doctor for the incisional hernia; and that the claimant is not relieved of the effects of the agreement of January 3, 2000, but the agreement does not apply to the claimant's back condition since it had not come into existence on January 3, 2000. The appellant (carrier) appealed the hearing officer's determination that the compensable injury extends to and includes low back pain and muscle spasm, arguing that pain does not constitute a compensable injury. There is no response from the claimant.

DECISION

Affirmed.

On appeal, the carrier asserts that the hearing officer erred in determining that the claimant's _____, compensable injury extends to and includes his low back pain and muscle spasm. The carrier correctly points out that the Appeal Panel has held that mere pain does not constitute a compensable injury. However, in this case, the hearing officer did not make a finding that the claimant's low back pain and muscle spasm constituted, in and of themselves, a compensable injury. Instead, he made a factual determination that the claimant's low back pain and, muscle spasm were caused by compensations made due to the compensable injury, and therefore, they are symptoms of the compensable injury. This is fully supported by medical evidence describing how an incision in the front abdominal musculature can be felt as back pain.

The fact that the carrier is insistent upon a declaration as to whether such pain is or is not an injury may indicate that it believes this dictates its obligation to pay for treatment of the back. Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury; promotes recovery; or enhances the ability of the employee to return to or retain employment. Section 408.021(a). Plainly, one of the effects of the compensable hernia and its treatment is back pain, and must be treated in order to fully treat the hernia.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's determination that the claimant's current low back pain and muscle spasm are symptoms of the _____, compensable injury

is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

The hearing officer's decision and order are affirmed.

Although listed as Camden Fire Insurance Association in the caption, the true corporate name of the insurance carrier is **CGU INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge