

APPEAL NO. 012215
FILED NOVEMBER 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 July 11, 2001, and on August 20, 2001. The hearing officer resolved the disputed issues by determining that the respondent's (claimant) compensable injury of _____, includes injury to the low back; that the claimant had good cause for failing to attend the required medical examination (RME) of April 10, 2001; and that the appellant (carrier) is liable for temporary income benefits (TIBs) for the period in which the claimant failed to submit to the examination. The carrier appealed, asserting that the hearing officer abused her discretion and the decision is not supported by the evidence. The claimant responded, urging affirmance. The claimant did not respond to the carrier's appeal of the decision that she had good cause for the failure to attend the RME.

DECISION

Affirmed.

This case involved an extent of injury to the lumbar spine that the claimant contended was the result of medical treatment (a pain block) she received to treat her reflex sympathetic dystrophy injury of _____. Although the claimant had worked at a second job before her date of injury, she said that she had not worked this job after her date of injury. Citing security issues, she refused to divulge the identity of her second employer, even when ordered to do so by the hearing officer. There is no indication in the record that pre-trial discovery was done.

ABUSE-OF-DISCRETION POINTS OF ERROR

Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. We will first address the carrier's assertion that the hearing officer abused her discretion by allowing the claimant to refuse to answer questions regarding her concurrent employment. It is critical to our determination that disability had not been put in issue; if it had been, the tasks performed during second employment would have been relevant, and the failure to answer such questions would be scrutinized in any appeal of a finding on such an issue. However, the hearing officer need not have considered such concurrent employment on the stated issues and we therefore cannot agree that she abused her discretion.

The carrier further asserts that the hearing officer abused her discretion by failing to force the claimant to turn over alleged tape-recorded conversations between the claimant and her treating doctor's office manager. These conversations on the tapes allegedly contain representations being made to the claimant that her treating doctor would attend the RME, and that the office manager would reschedule the appointment with the

carrier to a time when the treating doctor could attend. The claimant said that such tapes were not within her possession or control. Adverse consequences from the failure to exchange evidence extends only to information within the possession or control of the party. Section 410.161.

SUSPENSION OF TIBs FOR FAILURE TO ATTEND RME

The hearing officer did not err in failing to suspend TIBs because the claimant did not attend the first-scheduled RME. There is correspondence from the claimant to her treating doctor, as well as notes in the medical records of the treating doctor, documenting a misunderstanding about whether the treating doctor would attend the RME. On the other hand, the claimant's inquiry to her treating doctor started rather later after she had been initially notified of the RME (the claimant said she was previously unaware of the right of a claimant to have the treating doctor); prior to this, she had been attempting to reschedule her appointment to allow her mother to attend. The record also documents a general unwillingness of the claimant to be examined by a doctor for the carrier. However, she did attend the second-scheduled RME, which was generally favorable to her extended injury claims. While the record would support an exercise of discretion by the hearing officer to forfeit entitlement to TIBs between the RME appointment dates, we cannot agree that her decision that there was good cause for the claimant's failure to attend the first RME is an abuse of discretion.

EXTENT OF INJURY

Injuries caused by reasonable and necessary medical treatment of the compensable injury become part of that injury. Texas Workers' Compensation Commission Appeal No. 92540, decided November 19, 1992. The hearing officer did not err in determining that the claimant's _____, compensable injury includes injury to the low back. The hearing officer's determination as to the extent of the claimant's injury is sufficiently supported by the medical evidence provided.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ZURICH NORTH AMERICA** and the name and address of its registered agent for service of process is

**GARY SUDOL
ZURICH NORTH AMERICA
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Susan M. Kelley
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge