

APPEAL NO. 012291
FILED NOVEMBER 12, 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 (CCH) was held on July 11, 2001. The record remained open until August 28, 2001, to permit the parties to present their closing arguments in written form. The hearing officer determined that the respondent's (claimant) compensable injury of _____, is a producing cause of his sexual dysfunction; that the claimant's compensable injury of _____, is not a producing cause of his digestive ulcers, hypertension, or diabetes; that on January 25, 1995, a Texas Workers' Compensation Commission (Commission) hearing officer entered a decision which held that the appellant (carrier) had waived its right to dispute the compensability of the claimant's hypertension, diabetes, anxiety, sexual dysfunction, and psychological condition; that the Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 950263, decided April 6, 1995, affirmed the hearing officer's decision to the effect that the carrier had waived the right to dispute the compensability of the claimant's hypertension, diabetes, anxiety, sexual dysfunction, and psychological condition; that neither the carrier nor the claimant appealed the Appeals Panel decision to a court of competent jurisdiction; and that the doctrine of *res judicata* applies to prevent the parties from [relitigating] the compensability of the claimant's hypertension, diabetes, and/or sexual dysfunction. As the Discussion section of the hearing officer's decision and order makes clear, the digestive ulcers condition was not previously resolved by the hearing officer in the 1995 case. The hearing officer did not find the digestive ulcers condition to be related to the claimant's compensable injury.

The carrier has appealed the hearing officer's determinations, taking the position that the hearing officer failed to reach the carrier's extent-of-injury issue when rendering the decision in this case. The claimant did not respond to the carrier's appeal.

DECISION

Affirmed.

The carrier's argument at the CCH and on appeal is that any exacerbation or aggravation of the claimant's diabetes, impotence, hypertension, and psychological conditions that were determined to be compensable in 1995 has resolved, and that therefore the claimant's current medical condition in regard to these diseases is not an extension of his compensable injury. The carrier thus phrases the issue in this case as being whether the compensable injury **continues** to extend to what the carrier contends are "ordinary diseases of life." (Emphasis added.) The carrier argues that after the holding of Continental Casualty Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.), Section 409.021 applies to issues of compensability of an injury and can be waived by a failure to timely contest, but that extent of injury issues are never waived. The carrier also cites Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3), which was effective March 13, 2000, for this proposition. We have no doubt that Rule 124.3 was

promulgated in response to the Williamson decision. We reject, however, the carrier's interpretation and attempted retroactive application of Williamson and the new Rule 124.3 to a case that was decided finally in 1995. The carrier complains that the hearing officer fails to address its contention that this is an extent of injury issue, but we hold that the hearing officer correctly applied the principle of *res judicata* to this case. The 1995 CCH decision, which was appealed to and decided by the Appeals Panel, and never taken forward for judicial review, is the final determination of these issues. It was unnecessary for the hearing officer to comment further on the carrier's "creative" construction of a recent case and an even more recent administrative rule to apply to the injuries in this case.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TRANSPORTATION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C. T. CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge