APPEAL NO. 012408
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 August 27, 2001. She held that the respondent's (claimant) compensable injury of _____, extended to and included an injury to his lumbar spine. The parties stipulated that the injury did not extend to other listed body parts that were originally stated in issue.

The self-insured (hereinafter the carrier) appeals, arguing that the hearing officer was collaterally estopped from determining these issues, and that a prior decision and order was *res judicata* on the scope of the injury. The carrier also argues that evidence linking the lumbar spine to the injury does not exist or is insufficient to support the hearing officer. The claimant responds that the hearing officer's decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

RES JUDICATA

The hearing officer plainly did not err in refusing to apply the doctrine of *res judicata* to a prior decision in which the compensability of the claimant's injury was determined. First of all, she correctly noted that the benefit review conference (BRC) report underlying the CCH did not dispute the extent question on the basis of *res judicata*, but solely on the medical evidence. However, she went ahead and determined on the merits that *res judicata* did not apply because the scope of the injury was not the focus of the prior CCH.

While we do not necessarily agree that there must be a separately stated issue on extent of injury (as the hearing officer indicates) where a carrier is disputing that <u>any</u> injury occurred, each dispute should be reviewed on its own facts to determine if the scope of an injury was actually litigated at a prior CCH, either as an express or subsumed issue.

It is clear from reviewing the prior decision that the focus of that controversy at the CCH level was whether the claimant had been injured as a result of the willful intent to injure himself. The prior CCH decision does not indicate that the carrier took an alternative position that even if the claimant was injured (which it denied), that his injury should be limited to the right hip. While ambiguity is interjected because the BRC report for that CCH made recommendations as to what body parts were and were <u>not</u> injured, we note that no record is made at a BRC, Section 410.026(d), and the hearing officer in the CCH did not make parallel determinations as to what was not injured. The discussion indicated that the claimant testified at the CCH that his injuries other than his hip "had resolved." This supports the argument that there was no active dispute by the time the CCH was held over

the scope of the injury. (The claimant's impression at that CCH does not bind him where it turns out that a condition has not resolved.)

We conclude from this, as did the hearing officer, that the focus of the previous adjudication was the occurrence of an injury, whether the claimant willfully intended to injure himself, and whether he had disability, and it was not the scope of any compensable injury in the event that the previous hearing officer held against the carrier on its willful intent argument.

EXTENT OF INJURY

The site of the trauma and its immediate effects are not necessarily determinative of the nature and extent of the compensable injury and the full consequences of the original injury, together with the effects of its treatment, upon the health and body of the worker are to be considered. Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The record is such that the hearing officer could reasonably infer that a blow to the hip affected the contiguous body region of the lower back as well. We affirm the decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge