

APPEAL NO. 020761  
FILED MAY 22, 2002

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 March 13, 2002. The appellant (claimant) appeals the hearing officer's determination that the Texas Workers' Compensation Commission (Commission) no longer has jurisdiction to conduct a CCH on "TWCC Claim No. 1" regarding the issue of what is the claimant's impairment rating (IR). The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The issue of IR was litigated at a prior CCH, in which a Decision and Order was issued, dated May 20, 1998, and the doctrine of *res judicata* applies. Regarding *res judicata*, the Texas Supreme Court has stated that "any cause of action which arises out of the same facts should, if practicable, be litigated in the same law suit." Barr v. Resolution Trust Corp., 837 S.W.2d 627, 630 (Tex. 1992); Amstadt v. US Brass Corp., 919 S.W.2d 644 (Tex. 1996). *Res judicata* has been found applicable to administrative proceedings generally (see Bryant v. L.H. Moore Canning Company, 509 S.W.2d 432 (Tex. Civ. App.-Corpus Christi, 1974), cert. denied 419 U.S. 845), and by the Appeals Panel to the dispute resolution process. See, e.g., Texas Workers' Compensation Commission Appeal No. 93993, decided December 15, 1993 (Unpublished).

The claimant contends that because she never gave up the right to have the issue of IR first heard at a benefit review conference (BRC) prior to the 1998 CCH, the issue was never properly before, nor addressed by, the Commission. As correctly noted by the hearing officer, the claimant did not make an objection at the 1998 CCH concerning whether she was entitled to a BRC prior to commencement of that CCH. In order to preserve error, the claimant had to raise the issue at the 1998 CCH and give the hearing officer at that time a chance to correct any possible error. Because the claimant did not do so, any possible error was waived. In any case, our review of the record does not establish a denial of due process or reversible error in this regard.

We hold that the hearing officer correctly applied the principle of *res judicata* to this case. The 1998 CCH decision, which was appealed to and decided by the Appeals Panel, taken forward for judicial review and nonsuited by the claimant, is the final determination of the issue.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL GROUP** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 N. ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

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Roy L. Warren  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge