

APPEAL NO. 021622
FILED AUGUST 12, 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 was held on June 3, 2002. The hearing officer resolved the disputed issue by determining that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant urges, for the first time on appeal, that irrespective of these determinations, the respondent (carrier) did not timely contest the compensability of the claimed injury and, therefore, has waived its right to do so. The carrier urges affirmance and points out that waiver was not an issue raised or litigated at the hearing and should not be considered for the first time on appeal.

DECISION

We affirm the hearing officer's decision.

The primary point of appeal is that the hearing officer erred by failing to consider the case of Continental Casualty Company v. Downs, Texas Supreme Court No. 00-1309. There was no error on the part of the hearing officer. The record reflects that the parties agreed at the outset of the hearing that the disputed issues for resolution were whether the claimant sustained a compensable injury and had disability. Not only was there no agreement by the parties to add the issue of carrier waiver, the record is devoid of any reference to this issue. Because the claimant did not raise the issue until after the record in the hearing was closed, we decline to address it for the first time on appeal.

On the merits of the decision, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY 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.**

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge