

APPEAL NO. 021663
FILED AUGUST 19, 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 May 21, 2002. The hearing officer determined that (1) the compensable injury of _____, extends to include the lumbar spine (L3-4, L4-5, and L5-S1); and (2) the respondent (claimant) had disability on May 16, 2001; May 23, 2001; May 28, 2001, through May 31, 2001; June 1, 2001; June 4, 2001, through June 6, 2001; and July 10, 2001, through July 13, 2001. The appellant (carrier) appeals these determinations on legal and evidentiary grounds. The claimant did not file a response.

DECISION

We affirm.

The parties stipulated that the claimant sustained a compensable injury on _____. The compensable injury occurred while the claimant was digging a trench for the installation of an irrigation system. The claimant testified that he hurt his back while using a machine to dig. A subsequent discogram and MRI revealed herniated/bulging discs at L3-4, L4-5, and L5-S1. The claimant contends that the compensable injury extends to include these conditions, but also asserts that he sustained a new aggravation injury on _____, to the same region of his back. The second claimed injury occurred while the claimant was working for the same employer, but under a different workers' compensation carrier. The claimant testified that he missed work as a result of his injuries and had disability on May 16, 2001; May 23, 2001; May 28, 2001, through May 31, 2001; June 1, 2001; June 4, 2001, through June 6, 2001; and July 10, 2001, through July 13, 2001. The claimant admitted under cross-examination, however, that he would not have missed work on those days but for the incident with the pain at work on _____. The carrier asserted that the claimant's injuries to the lumbar spine at L3-4, L4-5, and L5-S1, and the above periods of disability, are attributable to the incident of _____, and not the compensable injury of _____.

The hearing officer scheduled separate hearings for each claim. The hearings were to address issues of injury and resulting disability involving the same region of the claimant's back. Given its position on these issues, the carrier requested a consolidated hearing in these matters. The request was denied, and the carrier was permitted only to observe the proceedings regarding the claimed injury of _____.¹ The carrier asserts error in the hearing officer's refusal to hold a consolidated hearing.

¹ The motion for consolidation and denial are not reflected in the record of this case. The hearing officer's decision and order does indicate, however, that the carrier's representatives were permitted to observe each other's proceedings.

Because a decision regarding the claimed injury of _____, could affect the carrier's liability with regard to the compensable injury of _____, the carrier had a direct legal interest in that proceeding. The carrier, therefore, was entitled to participate in such proceeding, either as a party or by means of a consolidated CCH. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 140.1(4) (Rule 140.1(4)) (defining "party" as a person entitled to take part in a proceeding because of a direct legal interest in the outcome); and Texas Workers' Compensation Commission Appeal No. 941316, decided November 14, 1994 (reversing and remanding the hearing officer's decision to allow participation of a second carrier where the dispute revolved around whether a condition is a new injury or a continuation of an old injury under a different carrier). The hearing officer's refusal to consolidate the hearings, however, is not reversible error in this instance. Texas Workers' Compensation Commission records indicate that the hearing officer's decision with regard to the claimed injury of _____, was not appealed and has become final, pursuant to Section 410.169. In that case, the hearing officer determined that the claimant did not sustain a compensable injury on _____, and that he did not have disability. We note that the carrier had the opportunity in this proceeding, regarding the _____, injury, to present its case with regard to the cause of the claimant's lumbar injuries and disability. The carrier was not prevented from offering evidence regarding the claimed injury of _____. The better practice would be to consolidate the hearings. However, we perceive no reversible error.

EXTENT OF INJURY AND DISABILITY

The hearing officer did not err in the extent-of-injury and disability determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The carrier contends that the hearing officer's Finding of Fact No. 4 does not support the determination that the claimant's disability resulted from the injury of _____. The hearing officer discussed the evidence and determined that the claimant sustained pain while working on _____. Finding of Fact No. 4 provides, "As a result of the _____ work related incident, Claimant experienced a recurrence of the _____ injury at L3-4 and a worsening of his lumbar condition from the _____ injury at L4-5 and L5-S1." We have said that the compensable injury need only be a cause of the disability. Texas Workers' Compensation Commission Appeal No. 960054, decided February 21, 1996. Accordingly, the hearing officer's finding that the claimant's injurious condition of _____, continued at L3-4 sufficiently supports the disability determination.

We affirm the hearing officer's decision and order.

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

**RICHARD A. MAYER
11910 GREENVILLE AVENUE, SUITE 600
DALLAS, TEXAS 75243-9332.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge