

APPEAL NO. 022276
FILED OCTOBER 24, 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 August 8, 2002. With regard to the issue before him ([w]hat is the nature and extent of the [respondent's (claimant)] compensable occupational disease of _____?), the hearing officer determined "the Claimant sustained a compensable occupational disease on _____, in the nature of bilateral carpal tunnel syndrome [BCTS] and left [D]e Quervain's syndrome." The appellant (carrier) appeals that determination, asserting legal error by the hearing officer. There is no response from the claimant contained in our file. There is no appeal of the hearing officer's determination that the claimant's compensable injury does not "extend to include left cubital tunnel syndrome, left elbow lateral humeral epicondylitis, or left elbow tenosynovitis," and that determination has become final. Section 410.169.

DECISION

Affirmed.

As noted by the hearing officer in his Statement of the Evidence, there was a prior CCH involving this claim, with an issue of: "Did the Claimant sustain a compensable injury in the form of an occupational disease on _____?" The hearing officer in the prior CCH (a different hearing officer than the one who presided over this CCH) made Finding of Fact No. 3 that "As of _____, the Claimant sustained an injury in the form of an occupational disease...." The prior hearing officer was not required or expected to be more specific than he was in answering the issue that was before him. He did, however, comment in the Statement of the Evidence on various conditions that were being claimed as included in the compensable injury. As noted above, this CCH was held to determine the nature and extent of the compensable occupational disease of _____; in retrospect, assigning this case to the same hearing officer who conducted the previous CCH would have been the better course of action, but we will respond to the facts before us.

The carrier contends that the hearing officer erred in finding that the claimant's compensable injury consists of BCTS and left De Quervain's syndrome as a matter of *res judicata*. 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 hearing officer reviewed the Decision and Order from the prior CCH, as well as evidence from the prior CCH which was presented again, and concluded that the prior hearing officer found an occupational disease of BCTS and left De Quervain's disease. He went on to state that he was "compelled solely by principles of res judicata to also find an occupational disease of [BCTS] and left De Quervain's disease." We view this statement of the hearing officer as meaning that he has factually found that these named conditions are the conditions that the prior hearing officer found to be included in the compensable occupational disease, and that, under principles of res judicata, he would also find that the conditions were included in the compensable injury. There is sufficient evidence to support the hearing officer's factual finding of what the prior hearing officer found, and the hearing officer has correctly applied the legal principle of res judicata.

We affirm the decision and order of the hearing officer.

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

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. I do not believe that the hearing officer in this case could give res judicata effect to an implied determination of the nature and extent of the compensable injury made by a different hearing officer in a previous decision. While I do not disagree that the first hearing officer may have intended to find that the compensable injury included BCTS and left De Quervain's disease, he did not do so in

his finding of fact. In my opinion, the only determination to which the hearing officer in this case could give res judicata effect was the determination that the claimant sustained a compensable injury. Thus, I believe that the hearing officer herein was required to consider and resolve the extent-of-injury issue on the merits based upon the evidence before him, without reference to the prior hearing officer's decision.

Elaine M. Chaney
Appeals Judge