

APPEAL NO. 022483  
FILED NOVEMBER 13, 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 September 4, 2002. The hearing officer determined that the compensable injury sustained by the respondent (claimant) on \_\_\_\_\_, extends to and includes a bulging thoracic disc and a herniated thoracic disc. The appellant (carrier) contends that under the doctrine of *res judicata*, the hearing officer was precluded from making a determination relating to the thoracic spine. Alternatively, the carrier argues that the hearing officer's decision is against the great weight and preponderance of the evidence. The claimant urges affirmance of the hearing officer's decision.

DECISION

We affirm.

On March 29, 2001, a prior hearing relating to this claim was conducted to determine whether the claimant sustained a compensable injury to her lower back on \_\_\_\_\_. During that hearing, evidence that the claimant injured her thoracic and lumbar spine during the incident in question was presented. However, the hearing officer made no mention of a thoracic injury in the determinations in his decision and, in response to the specific issue presented to him, determined that the claimant sustained a compensable injury to her lower back on \_\_\_\_\_. There is no indication that either party appealed this decision.

The carrier argues on appeal that the issue of whether the claimant sustained a compensable injury to her thoracic spine was effectively tried by consent of the parties during that 2001 proceeding. Consequently, the carrier urges that the hearing officer in the present case was precluded from making a determination relating to the thoracic spine under the doctrine of *res judicata*. *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 Texas Workers' Compensation Commission Appeal No. 022276, decided October 24, 2002.

The carrier cites Texas Workers' Compensation Commission Appeal No. 950690, decided June 15, 1995; Texas Workers' Compensation Commission Appeal No. 960022, decided February 15, 1996; and Texas Workers' Compensation Commission Appeal No. 962338, decided January 2, 1997, in support of its position. However, Appeal No. 950690 and Appeal No. 960022 involved a general or global issue of compensability at the first hearing rather than an issue limited to a specific body part, as in the present case. Appeal No. 962338 involved a case where there had been a determination at a prior hearing that the injury included "only" the face and cervical spine. In this case, there was no determination at the prior hearing that the injury was

limited to “only” certain body parts. Further, the facts in the present case are distinguishable from those in the above-referenced decisions because the issue at the prior hearing was not generally whether the claimant sustained a compensable injury. Rather, the issue relating to compensability at the prior hearing was specifically whether the claimant sustained a compensable injury to her lower back. As such, we do not find the decisions cited by the carrier to be controlling or that the doctrine of res judicata is applicable under the facts of this case.

Conflicting evidence was presented on the extent-of-injury issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer’s findings of fact in this regard are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer’s decision and order.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Michael B. McShane  
Appeals Panel  
Manager/Judge