

APPEAL NO. 022901  
FILED JANUARY 3, 2003

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 October 15, 2002. With respect to the issues before him, the hearing officer determined that the Texas Workers' Compensation Commission (Commission) had jurisdiction to determine the compensability of the respondent's (claimant) right wrist injury and that the claimant's compensable injury of \_\_\_\_\_, extends to and includes an injury to the right wrist. In its appeal, the appellant (carrier) argues that the hearing officer erred in determining that the Commission had jurisdiction to determine the compensability of the claimant's right wrist injury, arguing that that issue had already been resolved in favor of the carrier at an earlier hearing and that, as such, the hearing officer in this case was bound by that decision under the doctrine of *res judicata*. In her response to the carrier's appeal, the claimant urges affirmance. The carrier did not appeal the factual determination that the claimant's compensable injury includes the right wrist; rather, it focuses exclusively on its *res judicata* argument on appeal.

DECISION

Affirmed.

The facts in this case are largely undisputed. At a January 23, 2002, hearing, a different hearing officer determined that the claimant sustained a compensable injury in the form of an occupational disease. In the finding of fact supporting that legal conclusion, the hearing officer stated that the "Claimant injured her left upper extremity as a result of her work as a mail sorter." The hearing officer's decision was appealed by the carrier and the Appeals Panel affirmed the decision and order in Texas Workers' Compensation Commission Appeal No. 020368, April 9, 2002. The record from the initial hearing reflects that the claimant alleged that she had sustained an occupational disease injury to both upper extremities at the January 23, 2002, hearing. The carrier contends that even though there was no issue as to the extent of the injury before the hearing officer at the January 23, 2002, hearing, that issue was actually litigated and resolved against the claimant. In so arguing, the carrier contends that the hearing officer's determination that the claimant "injured her left upper extremity as a result of her work as a mail sorter" demonstrates that the hearing officer considered and resolved the issue of whether the injury included the right upper extremity at the first hearing. Thus, the carrier further argues that the hearing officer in the instant case is bound by that determination and cannot, under the principle of *res judicata*, address that issue.

We cannot agree with the carrier's argument that the hearing officer in this instance was required under the principle of *res judicata* to determine that the Commission did not have jurisdiction to consider the issue of whether the claimant's compensable injury includes a right wrist injury. The hearing officer determined that the

hearing officer at the first hearing did not resolve the issue of whether the compensable injury included the right upper extremity because that issue was not before her. Thus, the hearing officer further determined that there was no decision about the right upper extremity to which he could give res judicata effect. His determination in that regard is supported by sufficient evidence. The hearing officer here seems to be determining that the first hearing officer's statement that the claimant injured her left upper extremity was a comment on the nature of the claimant's compensable injury, as opposed to a definitive determination of the extent of the injury and that is a reasonable interpretation of the first hearing officer's decision. Accordingly, the hearing officer herein correctly determined that the Commission had jurisdiction to consider the extent issue in the subsequent hearing and did not err in determining that the doctrine of res judicata was inapplicable in this case.

The hearing officer's decision and order are affirmed.

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

**ROBIN MOUNTAIN  
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200  
IRVING, TEXAS 75063.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge