

APPEAL NO. 030022  
FILED FEBRUARY 27, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case is back before us after our remand in Texas Workers' Compensation Commission Appeal No. 022514, decided November 18, 2002. We had remanded the case for the hearing officer to properly apply the holding of Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002) (hereinafter Downs) to the case. On remand the hearing officer resolved the issues before him by determining that the appellant (carrier herein) waived its right to dispute the compensability of the respondent's (claimant herein) injury of \_\_\_\_\_; by finding that the claimant suffered a compensable injury on \_\_\_\_\_; by determining that the injury included injury to the claimant's cervical spine, bilateral shoulders, bilateral arms, bilateral wrists, and lumbar spine as well as headaches; and by determining that the claimant had disability from May 6, 2002, through August 27, 2002. The carrier files a request for review and the claimant files a response.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

On appeal the carrier makes a number of arguments which concern carrier waiver ranging from contending that the Downs case was wrongly decided to contending that the Downs decision was not applicable in the present case. Downs was a decision of the Texas Supreme Court and we determined in our decision Appeal No. 022514, *supra*, that the Downs decision applied to the present case. We find no error in the hearing officer's application of Downs in the present case.

The carrier also contends that the hearing officer erred in the present case in finding the claimant suffered an injury; that this injury included an injury to the claimant's cervical spine, bilateral arms, bilateral shoulders, bilateral wrists, and lumbar spine as well as headaches; and that the claimant had disability from May 6, 2002, through August 27, 2002. Injury, extent of injury and disability are questions of fact. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find sufficient evidence to support the hearing officer's resolution of the injury, extent of injury and disability issues.

The decision and order of the hearing officer are affirmed.

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

**PRENTICE HALL CORPORATION SYSTEM, INC.  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge