

APPEAL NO. 030055
FILED FEBRUARY 26, 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 (CCH) was held on December 12, 2002. The hearing officer determined that (1) the compensable injury of _____, does not extend to and include the left arm, based upon the doctrine of *res judicata* and the evidence presented; and (2) the appellant (claimant) had disability from April 14 through April 20, 2001. The claimant appeals, asserting that the hearing officer erred in applying the doctrine of *res judicata* and that the hearing officer's determinations are against the great weight of the evidence. The respondent (self-insured) urges affirmance.

DECISION

Affirmed in part, reversed and rendered in part.

EXTENT OF INJURY

The hearing officer erred in determining that the doctrine of *res judicata* barred litigation of the extent of injury to the claimant's left arm because the issue of extent of injury was litigated in a prior CCH on May 16, 2002. The doctrine of *res judicata*, generally speaking, "prevents the re-litigation of a claim or cause of action that has been finally adjudicated as well as related matters that, with the use of due diligence, should have been litigated in the prior suit." Barr v. Resolution Trust Corporation, ex rel. Sunbelt Federal Savings, 837 S.W.2d 627, 628 (Tex. 1992). *Res judicata* has been found applicable to administrative proceedings. 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; Texas Workers' Compensation Commission Appeal No. 960022, decided February 15, 1996. The transcript of the hearing on May 16, 2002, indicates that the self-insured accepted, as compensable, injuries to the claimant's chest and left arm, but disputed the cervical spine, left shoulder, and low back. While the self-insured attempted to later stipulate only to a chest strain injury, it is clear that the parties proceeded on the assumption that the left arm was not in dispute. To be sure, the extent-of-injury issue certified for resolution concerned only the claimed cervical, left shoulder, and low back injuries, and the hearing officer made no determination with regard to the left arm. Under these circumstances, we cannot agree that the issue of extent of injury to the left arm is barred under the doctrine of *res judicata*.

Given indications in the evidence that the left arm was part of the original claimed injury and that the self-insured accepted such injury, we are troubled that the issue of extent of injury to the left arm found its way to a CCH without a corresponding issue of carrier waiver having been added. Nonetheless, in the absence of a waiver issue or similar argument by the claimant, we are constrained to review the extent-of-injury determination on the merits.

The hearing officer did not err in determining that the compensable injury of _____, does not extend to and include the left arm. The determination involved a question 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 determination is 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, 176 (Tex. 1986).

DISABILITY

The hearing officer did not err in determining that the claimant had disability from April 14 through April 20, 2001. The claimant contends that disability continued from April 25, 2001, through the date of the hearing. There was conflicting evidence presented with regard to this issue. The hearing officer reviewed the record and decided what facts were established. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

For the above stated reasons, we reverse the hearing officer's extent-of-injury determination, in part, and render a decision that the doctrine of *res judicata* does not bar litigation of this issue with regard to the claimant's left arm. However, we affirm the hearing officer's extent-of-injury determination based upon the evidence. Likewise, we affirm the hearing officer's decision and order with regard to disability.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**DR. RA
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Terri Kay Oliver
Appeals Judge