

APPEAL NO. 030497
FILED APRIL 7, 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 January 21, 2003. The hearing officer determined that the appellant's (claimant) _____, compensable low back injury does not extend to and include a herniated disc at L5-S1; that the claimant did not sustain disability beginning on February 20, 2001, and continuing through the date of the hearing, or for any other time period, as a result of the _____, compensable low back injury; and that the respondent (carrier) did not waive the right to contest compensability of the claimant's claimed herniated disc at L5-S1 because the carrier raised an extent-of-injury issue by contesting the compensability of the claimed herniated disc at L5-S1, and Section 409.021 does not apply to extent-of-injury issues. The claimant appealed and the carrier responded, urging affirmance.

DECISION

Affirmed.

On appeal, the claimant asserts that the hearing officer erred as a matter of law because he decided this case on the basis of extent of injury. The claimant asserts that this was not an extent case, and that the carrier waived its right to contest compensability of the claimed injury under Section 409.021. Upon review of the record before us, we note that the parties originally convened to hear this matter on October 15, 2002. The hearing officer, on his own motion and without objection by either party, cancelled the hearing and sent the matter back to a benefit review conference to more clearly define the issues. The parties returned, and the hearing now subject to this appeal was held. At the outset of the second hearing, neither party made any procedural objections and both parties agreed to the disputed issues as read into the record by the hearing officer. It is apparent from the stated issues that whether or not this case involved an issue of extent of injury or carrier waiver was clearly before the hearing officer. This determination involved a question of fact for the hearing officer to resolve, and we are satisfied that he properly did so. Any objections which the claimant may have had regarding potential procedural error or the phrasing of the issues has been waived as they were not raised before or during either hearing.

What remains is essentially a sufficiency appeal. We have reviewed the complained-of determinations and find that the hearing officer's Decision and Order is supported by sufficient evidence to be affirmed. The disputed issues presented questions of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed issue. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to

determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY 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.**

Daniel R. Barry
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge