

APPEAL NO. 030600
FILED APRIL 24, 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 February 4, 2003. With respect to the sole disputed issue before him, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to and include an injury to the lumbar spine, including L4-5 herniated nucleus pulposus (HNP).¹ The claimant appeals, arguing that the great weight of the evidence does not support the hearing officer, and that the hearing officer abused his discretion in allowing respondent's (Carrier) Exhibit No. 10, the claimant's medical records from (Health Center). The carrier responds, urging that the hearing officer be affirmed, and specifically noting that it did not timely exchange Carrier's Exhibit No. 10 for the good cause that the claimant did not timely respond to her interrogatories propounded by the carrier, such that the carrier was delayed in requesting the medical records.

DECISION

Affirmed as modified.

We first note that the hearing officer referred to the claimant's HNP as being at "L5-L5" on pages 4 and 5. The alleged HNP was reported to be at L4-5, and the decision and order is hereby modified to read as such in place of "L5-L5."

The hearing officer did not abuse his discretion in admitting Carrier's Exhibit No. 10, as he clearly followed guiding rules and principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). The hearing officer overruled the claimant's objection to Carrier's Exhibit No. 10 on the basis that the carrier had good cause for its failure to timely exchange the exhibit, as it was a result of the claimant's tardiness in responding to the interrogatories propounded by the carrier.

The hearing officer did not err in determining that the claimant's compensable injury of _____, did not include an injury to her lumbar spine, including L4-5 HNP. While the claimant argues that her compensable injury resulted in her lumbar injury, the carrier argues that the medical evidence does not reference a lumbar injury for months after the date of injury, that the claimant had preexisting conditions causing whatever lumbar injury about which she complains, and did not tell the current treating and referral doctors about her preexisting conditions or previous back injuries. Extent of injury is a question 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). The hearing officer was acting within his province as the fact finder in resolving this issue in favor of the carrier

¹ In the certified issue from the benefit review conference, the extent-of-injury question included an injury to the claimant's right hip, right pelvic area, and uterus. The parties stipulated that these areas were not a part of or a result of the claimant's compensable injury at the beginning of the CCH.

and nothing in our review of the record demonstrates that the hearing officer's determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed, as modified.

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

**C.J. FIELDS
5910 NORTH CENTRAL EXPRESSWAY, SUITE 500
DALLAS, TEXAS 75206.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge