

APPEAL NO. 030751
FILED MAY 14, 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 28, 2003. The hearing officer determined that the appellant's (claimant) compensable (left arm) injury "does not extend to and include the cervical spine and cubital tunnel syndrome [CuTS]" and that the respondent (carrier) "did not waive the right to contest the extent of injury herein."

Although the hearing officer's statement of the case lists only the extent-of-injury issue, it is clear from the benefit review conference report, the Statement of the Evidence, the transcript of the CCH, and the appellate filings that carrier waiver of the extent of the injury was also an issue at the CCH.

The claimant appeals, contending that her preexisting injuries/diseases were shown not to be related to her current symptoms from the compensable injury and that the carrier waived its right to contest the extent of injury, as it previously paid for treatment and diagnostic tests to the cervical spine and related to the CuTS. The carrier responds, arguing that the statute and rules relating to carrier waiver do not apply to extent-of-injury issues, and urging that the hearing officer be affirmed in all respects.

DECISION

Affirmed as reformed.

We first correct a typographical error in the Statement of the Evidence and discussion, where the hearing officer has related the date of injury as "December 5, 2001." It is clear from the record that the date of injury is _____, and we hereby correct that notation to read "_____."

Second, the carrier represented, and a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) in evidence, as well as the hearing officer's discussion, all indicate that the carrier "accepted liability for an injury to the left arm." Consequently the hearing officer's determination that the compensable injury does not extend to left CuTS appears contrary to the evidence that the carrier has accepted liability for a left arm injury. We reform so much of the hearing officer's determinations that the compensable injury does not extend to CuTS by omitting that diagnosis from the extent-of-injury determinations.

The claimant contends that the carrier had accepted and paid for treatment to the cervical spine and that it was not until the designated doctor's January 25, 2002, report stating that the cervical spine was not part of the compensable injury that the carrier disputed the cervical spine. Exactly when the carrier received the first written notice of

the claimed cervical injury is unclear, however that injury was not disputed until a TWCC-21 dated July 9, 2002, was filed. The claimant cites Sections 409.021 and 409.022 (the pay or dispute provisions of the 1989 Act) and "TIG Premier Ins. Co. v. Pemberton and Texas Workers' Compensation Commission, S.W.3d (Submitted 02/19/03 to Waco Court of Appeals)." We do not have the Pemberton case and although the claimant represented he was giving a synopsis to the hearing officer no such case or summary is provided to us. Further, we note that a complete citation was not provided and efforts to locate the case have been unsuccessful. Therefore, we rely on Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)) which provides that Section 409.021 and subsection (a) of Rule 124.3 "do not apply to disputes of extent of injury." The carrier had accepted liability for a left arm injury and it was not until some months after the accepted injury that the issue that the left arm injury may also include the cervical spine was raised. See also Texas Workers' Compensation Commission Appeal No. 021569, decided August 12, 2002, Texas Workers' Compensation Commission Appeal No. 021907, decided September 16, 2002, Texas Workers' Compensation Commission Appeal No. 022183, decided October 9, 2002, and Texas Workers' Compensation Commission Appeal No. 022454, decided November 15, 2002, where we have discussed when disputes were properly characterized as extent of injury or not depending on the factual circumstances of each case.

We would also note that the hearing officer commented, and the evidence supports, that:

Litigation of the issue herein was prompted at the time of examination by the designated doctor when claimant for the first time revealed records of [Dr. H] showing that she had been treated for Keinbocks Disease since September of 1999. Claimant and/or her doctor engaged in a course of deception to withhold a truthful medical history. Had the truth been known by carrier at the initiation of the claim, the alleged injury might not have been compensable. The injury certainly does not extend to other body parts.

On the merits of the case there was conflicting medical evidence whether the compensable injury included a cervical injury. The designated doctor rather clearly thought not and while a designated doctor's opinion on extent of injury does not carry presumptive weight the hearing officer can certainly consider that report in weighing the evidence.

The testimony and medical evidence were in conflict in regard to the disputed issues and the evidence was sufficient to support the determinations of the hearing officer. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.]

1984, no writ). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge