

APPEAL NO. 030790
FILED MAY 19, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing (CCH) was held on January 6, 2003, with the record closing on March 3, 2003. The respondent (claimant) did not appear at the January 6, 2003, CCH. A "ten-day show cause letter" for his failure to appear was sent to the claimant, however the claimant did not respond. The hearing officer resolved the disputed issues by deciding that the claimant's compensable injury of _____, continues to include an injury to the right elbow after (alleged date of injury); that the claimant did not have disability resulting with regard to the _____, injury; that the claimant did not sustain a compensable injury on (alleged date of injury); that the claimant did not have disability resulting from a claimed (alleged date of injury), injury; and that the claimant is not entitled to change treating doctors to Dr. H. The respondent (carrier) appealed the hearing officer's extent-of-injury determination on legal grounds. The appeal file does not contain a response from the claimant. The hearing officer's injury, disability, and change of treating doctor determinations were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that claimant's compensable injury of _____, continues to include an injury to the right elbow after (alleged date of injury). The carrier contends that the claimant had the burden of proof on the extent-of-injury issue and that the burden could not be satisfied in this case because the claimant did not appear at the hearing. However, we note that at the benefit review conference held on October 31, 2002, the carrier argued that "the Claimant did not sustain a compensable aggravation to his right elbow on (alleged date of injury). He simply sustained an exacerbation of his lateral epicondylitis that did not amount to a new distinct injury to the right elbow. His current condition to the right elbow is a continuation of this _____ claim." From its position, it is apparent that the carrier accepted a compensable right elbow injury. Indeed, the framing of the issue presupposes that the _____, compensable injury included the right elbow.

Additionally, the Appeals Panel has said that "[w]hether or not the words 'sole cause' are used during a CCH, a carrier that wishes to assert that a current condition and incapacity results only from conditions in existence prior to an intervening accident [or, for that matter, an event occurring after the accident] bears the burden of proving that the preexisting [or subsequent] condition is the sole cause." See Texas Workers' Compensation Commission Appeal No. 001209, decided July 10, 2000, citing Texas Employers Insurance Association v. Page, 553 S. W. 2d 98, 100 (Tex. 1977); Texas Workers' Compensation Commission Appeal No. 92068, decided April 6, 1992. The

carrier, therefore, had the burden to prove that something other than the accepted _____, compensable injury caused the claimant's right elbow condition after (alleged date of injury). The carrier presented no such evidence. Accordingly, the hearing officer did not err in determining that the claimant's compensable injury of _____, continues to include an injury to the right elbow after (alleged date of injury).

The hearing officer's decision and order are affirmed.

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

**FRED WERKENTHIN
JACKSON WALKER, L.L.P.
100 CONGRESS AVENUE, SUITE 1100
AUSTIN, TEXAS 78701.**

Veronica Lopez
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge