

APPEAL NO. 031105
FILED JUNE 17, 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 April 10, 2003. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, does include a left shoulder and lumbar injury and aggravation of a pre-existing injury to the cervical spine. The appellant/cross-respondent (claimant) appealed, requesting clarification because the hearing officer failed to specifically address whether the compensable injury includes a herniated nucleus pulposus at L4-L5. Two different law firms appealed on behalf of the carrier, disputing the extent of injury determinations, contending that the determinations are against the great weight and preponderance of the evidence. Both law firms also filed responses to the claimant's appeal on behalf of the same carrier. The claimant additionally filed an objection to the dual filings of both the requests for review and responses, on behalf of the carrier.

DECISION

We affirm in part and reverse and remand in part.

We have previously held that the 1989 Act does not restrict the Appeal Panel's consideration to a single appeals document. See Texas Workers' Compensation Commission Appeal No. 950868, decided July 13, 1995. Both requests for review and responses were filed timely on behalf of the carrier and will be considered.

There was only one issue in dispute at the CCH. The parties agreed that the disputed issue to be decided was, "Does the compensable injury of _____, extend to the left shoulder, cervical, and to a herniated nucleus pulposus at L4-L5?" It was undisputed that the claimant sustained a compensable injury on _____, and the evidence reflected that the carrier accepted a lumbar strain/sprain injury. The claimant testified that he sustained a prior compensable injury in 1997, which resulted in surgery to both his neck and low back. Extent of injury is a question of fact. 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 Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer noted that the credible evidence supports that the claimant sustained a new injury to his shoulder and low back and sustained a new cervical injury in the form of an aggravation to his pre-existing cervical condition. 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). We affirm that part of the Decision and Order that determined that the compensable

injury of _____, does include a left shoulder and aggravated a pre-existing injury to the cervical spine.

However, the hearing officer did not specifically address whether the compensable injury of _____, included a herniated nucleus pulposus at L4-L5 as stated in the disputed issue. The hearing officer's finding that the compensable injury of _____, does include a lumbar injury does not address the specific issue being disputed. We remand this case for the hearing officer to determine based on the record whether the compensable injury of _____, includes a herniated nucleus pulposus at L4-L5.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **UNITED STATES FIDELITY & GUARANTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge