

APPEAL NO. 031725  
FILED AUGUST 20, 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 June 6, 2003, with (hearing officer 2). The issue at the hearing was whether respondent (carrier) waived the right to contest the compensability of the neck. Hearing officer 2 determined that the Texas Workers' Compensation Commission (Commission) does not have jurisdiction to hear the case. Appellant (claimant) appealed this determination. The file does not contain a response from carrier.

DECISION

We affirm.

Commission records reflect that after a prior hearing in this case, another hearing officer (hearing officer 1) determined that: (1) claimant did not injure her cervical spine in addition to her right shoulder on \_\_\_\_\_, and that the injury does not extend to the cervical spine; (2) claimant had disability for a stated period; and (3) carrier did not waive the right to contest the compensability of the neck injury and was not required to dispute the alleged neck injury within the deadline imposed by Section 409.021. In Texas Workers' Compensation Commission Appeal No. 030003, decided February 7, 2003, the Appeals Panel affirmed the decision of hearing officer 1 "on the disputed issues" but also determined that the hearing officer 1 erred in adding an issue on carrier waiver. The Appeals Panel said it affirmed the determination that the \_\_\_\_\_, injury did not cause a neck or cervical injury and that the injury did not extend to a neck or cervical injury. In her request for Appeals Panel review, claimant appealed the determination that carrier did not waive the right to contest the neck injury, but the Appeals Panel did not expressly address that issue on the merits because it determined that the issue had been improperly added. The Appeals Panel did state in a footnote that under the circumstances of the case, it was believed that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3(c)) would apply. At the hearing on June 6, 2003, the parties represented that the Appeals Panel's decision in Appeal No. 030003 had been appealed to the district court. Claimant's attorney represented that "claimant . . . sought judicial review on the issue of whether the neck was part of the compensable injury." Carrier's attorney agreed that that statement was accurate. The pleadings from the district court are not part of the record.

Claimant then requested a benefit review conference on the issue of whether carrier waived the right to contest the compensability of the neck by not contesting the injury in accordance with Section 409.021. On June 6, 2003, hearing officer 2 convened a hearing regarding this waiver issue regarding the same \_\_\_\_\_, injury. As stated above, hearing officer 2 determined that the Commission did not have jurisdiction to hear the case. We agree that hearing officer 2 did not have jurisdiction to hear the case. Section 410.207 states that, "[d]uring judicial review of an appeals panel

decision on any disputed issue relating to a workers' compensation claim, the commission retains jurisdiction of all other issues related to the claim." The attorneys for the parties, as officers of the court, represented that the Appeals Panel's decision in Appeal No. 030003 had been appealed and that the issue of "whether the neck was part of the compensable injury" was before the district court. Any Commission determination regarding carrier waiver and the alleged neck injury would, of course, affect whether the alleged neck injury is compensable so that benefits are payable. The Commission cannot be in a position of making a determinations regarding compensability as a matter of law, that are adverse to the district court's determination regarding compensability of the alleged neck injury. The Commission does not have jurisdiction over the waiver issue because it concerns whether benefits are payable for the alleged neck injury and that issue is before the district court. See Texas Workers' Compensation Commission Appeal No. 031385, decided July 16, 2003. Further, the carrier waiver issue regarding the neck is in a sense a threshold issue to the compensability issue in that it cannot be raised after compensability of the neck has already been determined at a prior hearing. See Texas Workers' Compensation Commission Appeal No. 950140, decided March 8, 1995; see *also* Texas Workers' Compensation Commission Appeal No 030284-s, decided March 18, 2003. We will not reach the merits of whether carrier waiver applies to extent-of-injury issues, as the merits of the carrier waiver issue is not before us. See *generally* Texas Workers' Compensation Commission Appeal No. 021569, decided August 12, 2002.

Claimant contends that there has been no final decision of the Appeals Panel with regard to carrier waiver and the alleged neck injury, noting that the Appeals Panel did not rule on the merits of the carrier waiver issue on appeal No. 030003. Claimant also contends that the district court does not have jurisdiction over the carrier waiver issue regarding the neck because judicial review in the district court was not sought regarding the waiver issue. Claimant asserts that the Commission retains jurisdiction of the waiver issue under Section 410.207. For the above-stated reasons, we conclude that the Commission does not have jurisdiction over the carrier waiver issue.

Claimant contends that she has been denied due process because she cannot get judicial review of the carrier waiver issue since there is no final decision of the Appeals Panel on this issue that can be appealed. The Appeals Panel has ruled regarding carrier waiver, on procedural grounds, and claimant could have appealed that final determination of the Appeals Panel to the district court. We perceive no error or denial of due process.

We affirm the decision and order of hearing officer 2.

According to information provided by carrier, the true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

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

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Edward Vilano  
Appeals Judge