

APPEAL NO. 031769
FILED AUGUST 21, 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 2, 2003. The hearing officer determined that the _____, compensable injury of appellant (claimant) includes hypertension but does not include an injury to the lumbar spine. Claimant appealed the adverse determinations regarding the lumbar spine on sufficiency grounds. Claimant also complains of the assistance of the ombudsman and contends the carrier waived the right to contest the compensability of the lumbar injury. The file does not contain a response from respondent (carrier).

DECISION

We affirm.

Claimant complains that the ombudsman assisting her did not offer certain evidence, did not seem to know the law, did not object to "badgering" by the attorney for carrier, and ignored the "mental side" to the injury. It was claimant's responsibility to be sure that all exhibits she wanted in evidence were offered into evidence. It was also claimant's responsibility to raise any issues or arguments she wanted to be considered. We conclude that claimant has not demonstrated reversible error.

Claimant contends that carrier waived the right to contest the compensability of the lumbar spine injury because it did not timely contest the injury in accordance with Section 409.021. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)) states that 409.021 does not apply to an extent-of-injury dispute.

Claimant contends that the hearing officer erred in determining that the compensable injury does not extend to the low back. Claimant testified that her _____, injury was to her upper extremities, neck, and low back. She said she sustained a repetitive trauma injury while rushing to type information and lifting boxes of paper at work. Claimant emphasizes that she said she injured her "back" and other body parts on the Employee's Notice of Injury of Occupational Disease and Claim for Compensation (TWCC-41) filed on August 20, 1996. On the TWCC-41, she said she sustained the injury because she "had to keypunch very fast to enter all ppwk to end month. My hands started shaking and I lost control of fingers, I also had to answer phones and cut calls off [sic]." However, the December 2, 1996, medical report from Dr. T, indicates that claimant had upper back pain and upper body pain and that she was not having any pain "below the waist." In a January 30, 1997, report, Dr. G, also noted that claimant's problems were with her upper back. Claimant insisted at the hearing and on appeal that her low back hurt from the very beginning and that repetitive trauma from lifting boxes at work caused a back injury, as well as the neck and other injuries claimed. Claimant said she had to lift boxes of paper at work at least "a couple times every day." Whether claimant complained of a low back from the beginning was a

factor for the hearing officer to consider in making his determination regarding extent of injury and involved a fact issue for the hearing officer.

We have reviewed the complained-of determinations regarding extent of injury and the lumbar spine and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not 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 the hearing officer's decision and order.

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

**CHARLES MILLER
10370 RICHMOND AVE.
HOUSTON, TEXAS 77042.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge