

APPEAL NO. 032015
FILED SEPTEMBER 18, 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 July 10, 2003. With respect to the single issue before her, the hearing officer determined that respondent 1's (claimant) compensable injury of _____, extends to and includes spinal stenosis and herniated lumbar discs. In its appeal, the appellant (carrier) challenges that determination as being against the great weight of the evidence. The appeal file does not contain a response from the claimant or from respondent 2 (subclaimant).

DECISION

Affirmed, as modified.

The hearing officer did not err in determining that the claimant's compensable injury of _____, extends to and includes spinal stenosis and herniated lumbar discs. That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was persuaded that the claimant sustained his burden of proving the causal connection between his compensable injury and the spinal stenosis and lumbar herniated discs. The factors emphasized by the carrier in challenging the hearing officer's extent-of-injury determination on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in resolving the issue before her. Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In her discussion, the hearing officer includes a discussion of whether the spinal surgery the claimant underwent in October 2002 was performed to treat the compensable injury. That issue was not before the hearing officer and indeed is not within her jurisdiction to decide. Rather, such a determination would have to be made by the Medical Review Division of the Texas Workers' Compensation Commission. The hearing officer's gratuitous comment addressing the question of whether the surgery was treatment for the compensable injury has no place in the decision. Accordingly, we strike the paragraph beginning on page four of the hearing officer's decision that begins with the word "notwithstanding" and ends with the word "question."

As so modified, the hearing officer's decision and order are affirmed.

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

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

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge