

APPEAL NO. 032198
FILED OCTOBER 8, 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 15, 2003. With respect to the issues before her, the hearing officer determined that the compensable injury of _____, is the producing cause of the respondent's (claimant) low back condition after the subsequent fall of (date for subsequent fall). In its appeal, the appellant (carrier) argues that the hearing officer erred as a matter of law by issuing a decision beyond the stated issue or that the decision was against the great weight and preponderance of the evidence. There is no response on file from the claimant.

DECISION

Affirmed, as reformed.

The hearing officer did not err in reaching the complained-of determinations. The carrier argued that the hearing officer erred as a matter of law by using the language in her determination that the compensable injury is "the" producing cause of the claimant's low back condition after the subsequent fall of (date for subsequent fall). The issue, as agreed to by the parties at the hearing, was "Whether the compensable injury of _____ is a producing cause of the claimant's lower back condition after the subsequent fall of (date for subsequent fall)? [Emphasis added]. The carrier asserts that changing the word from "a" to "the" requires a completely different burden and set of facts to be established. We disagree. It is necessary that, for the compensable injury to be "the" producing cause of the claimant's lower back condition, it must also be "a" producing cause. The former naturally encompasses the latter. Therefore, we reform the hearing officer's Conclusion of Law No. 3 to read:

3. The compensable injury of _____ is a producing cause of the Claimant's low back condition after the subsequent fall of (date for subsequent fall).

The hearing officer is the sole judge of the weight and credibility of the evidence and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Section 410.165(a). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence in favor of the claimant and in finding that the compensable injury is a producing cause of the claimant's low back condition after the subsequent fall of (date for subsequent fall). Nothing in our review of the record reveals that the hearing officer's determination in that regard 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 the determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). However, to keep in conformity with the language of the issue

presented at the hearing, we reform the hearing officer's decision to read: "The compensable injury of _____, is a producing cause of the respondent's low back condition after the subsequent fall of (date for subsequent fall)."

The carrier also argues that the hearing officer was without jurisdiction to resolve the issue before her because of a prior decision from the Medical Review Division of the Texas Workers' Compensation Commission, through an Independent Review Organization, that a requested CT-scan was not reasonable and necessary treatment for the _____, compensable injury because the claimant sustained a new injury in her fall at home in (date for subsequent fall). The carrier maintained that that determination became final in that the appeal to the State Office of Administrative Hearings was dismissed. We considered and rejected a similar argument in Texas Workers' Compensation Commission Appeal No. 951930, decided December 27, 1995, and we believe that the reasoning in that case is controlling here. Accordingly, we reject the carrier's argument that the hearing officer was without jurisdiction to resolve the issue presented at the hearing.

The hearing officer's decision and order are affirmed as reformed.

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

**RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge