

APPEAL NO. 040631
FILED MAY 5, 2004

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 February 18, 2004. The hearing officer determined that respondent (claimant) sustained a compensable injury on _____; that the compensable injury includes a lumbar disc injury including a disc herniation at L4-5; and that appellant (carrier) waived the right to contest the compensability of the claimed injury. Carrier agrees that claimant sustained a compensable injury to his knee on _____, but appealed the determinations regarding extent of injury and carrier waiver on sufficiency grounds. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends that it did not waive the right to contest the compensability of the claimed injury of _____. Carrier asserts that carrier waiver does not apply regarding extent of injury. The hearing officer made a general finding of carrier waiver but did not make a determination regarding what was the "claimed injury" that became compensable as a matter of law. The parties stipulated that carrier first received written notice of the claimed injury on February 8, 2003. A Payment of Compensation or Notice of Refused/Dispute Claim (TWCC-21) was filed on February 25, 2003, disputing extent of injury. At the hearing, carrier did not assert or prove that it took any action at all within seven days. See Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003. Therefore, the claimed injury of _____, became compensable as a matter of law. The claimed injury was to the left knee, hip, and foot. Claimant said he did not feel any back pain until a few months after the _____, injury, when the epidural steroid injections he had been receiving for a prior workers' compensation injury wore off. Because the evidence in the record does not show that, as of February 2003, claimant was claiming that he had injured his back on _____, there is no waiver regarding the back injury. Claimant has not shown that as of February 2003 the claimed injury included the back, so carrier did not waive the right to contest the compensability of a back injury. The fact that there was no carrier waiver regarding the back does not mean that the back injury is not part of the compensable injury, as discussed below.

Carrier contends the hearing officer erred in determining that the compensable injury includes a lumbar disc injury including a disc herniation at L4-5. We have reviewed the complained-of determination regarding extent of injury and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing

officer's determination is supported by the record and is 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.

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

**CLAY M. WHITE
SAMMONS & PARKER
218 NORTH COLLEGE
TYLER, TEXAS 75702.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

CONCUR IN THE RESULT:

Edward Vilano
Appeals Judge