

APPEAL NO. 040743
FILED MAY 19, 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 March 10, 2004. The hearing officer determined that: (1) the respondent (self-insured) did not waive the right to contest the cervical injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022; (2) the appellant's (claimant) compensable injury of _____, does not include an injury to the cervical spine; (3) the claimant had disability from May 29 through November 30, 2003, as a result of the compensable injury of _____; and (4) the claimant is not entitled to travel expenses for medical treatment from May 27 through October 10, 2003, at the direction of her treating doctor, Dr. P. The claimant appealed the hearing officer's determinations based on sufficiency of the evidence grounds. Additionally, the claimant asserts that photographs of her moving items were taken of her by a relative as retaliation for filing a workers' compensation claim. The self-insured responded, urging affirmance.

DECISION

Affirmed.

Conflicting evidence was presented on the extent-of-injury issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established. Nothing in our review of the record reveals that the hearing officer's determination that the compensable injury does not include an injury to the cervical spine is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer likewise did not err in determining that the self-insured did not waive its right to contest compensability of the cervical spine injury. It is undisputed that the self-insured accepted a left shoulder injury. The hearing officer noted that the self-insured's dispute of the claimed cervical injury can be properly characterized as one of extent, and is therefore not subject to waiver. We find no error in the hearing officer having so found. As a result, he properly determined that the self-insured did not waive its right to contest compensability of the conditions at issue because in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), the waiver provision of Section 409.021 does not apply to extent-of-injury disputes.

The hearing officer did not err in determining that the claimant's disability ended on November 30, 2003. The claimant had the burden of proof on that issue and it presented a question of fact for the hearing officer. There was conflicting evidence

presented on the disputed issue. In this instance, the hearing officer simply was not persuaded that the claimant sustained her burden of proving that she had disability after November 30, 2003, as a result of her compensable injury. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record reveals that the challenged determination is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb the disability determination on appeal. Cain, *supra*.

The hearing officer did not err in determining that the claimant is not entitled to reimbursement of travel expenses for medical treatment at the direction of her treating doctor, Dr. P. The hearing officer determined that the claimant did not sustain her burden of proving that she is entitled to reimbursement under Rule 134.6(b) because she did not demonstrate to the hearing officer's satisfaction that medical treatment for the compensable injury is not reasonably available within 20 miles of the injured employee's residence. Our review of the record does not reveal that the hearing officer's determination in that regard is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the hearing officer's determination that the claimant is not entitled to reimbursement for travel expenses.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge