

APPEAL NO. 041325
FILED JULY 16, 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 May 7, 2004. With respect to the issue before him, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to and include an injury to the right hip, which would require a total hip replacement. In his appeal, the claimant argues that the hearing officer's determination is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not extend to and include an injury to the right hip, which would require a total hip replacement. 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 on the issue of whether the claimant's compensable injury aggravated the degenerative condition in his right hip, which condition requires hip replacement surgery. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As such, the hearing officer was required to resolve the conflicts and inconsistencies in the evidence and to determine what facts the evidence established. In this instance, the hearing officer credited the evidence from Dr. D that the compensable injury did not aggravate the degenerative condition in the claimant's right hip over that from Dr. S and Dr. G that the compensable injury aggravated the degenerative disease in the claimant's right hip. The hearing officer was acting within his province as the fact finder in so doing. 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 hearing officer's extent-of-injury determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 330, ONE COMMODORE PLAZA
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Margaret L. Turner
Appeals Judge