

APPEAL NO. 042238  
FILED OCTOBER 28, 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 July 21, 2004, with the record closing on July 28, 2004. The hearing officer resolved the disputed issue by determining that the appellant's (claimant) \_\_\_\_\_, compensable injury does not extend to include a herniated disc at the L5-S1 level, and that the respondent (carrier) did not waive the right to contest the compensability of the low back. The claimant appealed the hearing officer's extent and waiver determinations, and the carrier responded, urging affirmance.

DECISION

Affirmed.

We note that the second issue in this case was worded "Has the carrier waived the right to contest compensability of the low back by not timely contesting compensability in accordance with [Section] 409.021?" What was actually in dispute and litigated was whether the carrier waived the right to contest compensability of the lumbar herniation at L5-S1. It is clear that the claimant did have a compensable lumbar injury as a result of the \_\_\_\_\_, compensable injury as she received treatment and an impairment rating (IR), which the carrier paid out, for her lumbar spine. We note that the IR was issued by a designated doctor, and the designated doctor gave no impairment for a specific disorder of the lumbar spine.

The herniation at L5-S1 is clearly an extent-of-injury issue, and we have repeatedly held that there is no carrier waiver in extent of injury cases. See Texas Workers' Compensation Commission Appeal No. 030831, decided May 22, 2003. The injury in question occurred on \_\_\_\_\_. Two lumbar MRIs performed on October 7, 1994, and March 7, 1996, showed no indication of a herniated disc at the L5-S1 level. We note that we have additionally held that in situations where carrier waiver has occurred, the injury which the carrier waives into is only the injurious condition which the carrier could have reasonably been able to discover within the waiver period. In the instant case, the waiver period was seven days after February 27, 1995, the date the carrier received its first written notice of the claimed injury. See Texas Workers' Compensation Commission Appeal No. 041738-s, decided September 8, 2004; Texas Workers' Compensation Commission Appeal No. 042048-s, decided October 11, 2004. The claimant was not diagnosed with a herniation at L5-S1 until several years after her date of injury. As such, we find no merit in the contention that a herniated disc at L5-S1 was part of the original compensable injury and that waiver attaches.

The hearing officer did not err in determining that the \_\_\_\_\_, compensable injury does not extend to include the diagnosed disc herniation at L5-S1. The hearing officer reviewed the record and determined that the claimant failed to prove

how the initial compensable injury naturally progressed to a herniation at the L5-S1 level. After review of the complained-of determination, we conclude that the disputed issue regarding extent of injury involved a factual question for the hearing officer. 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 **PROTECTIVE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**VAN WAGNER COMPANY  
1100 JUPITER ROAD, SUITE 121  
PLANO, TEXAS 75074.**

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Daniel R. Barry  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Margaret L. Turner  
Appeals Judge