

APPEAL NO. 042398  
FILED NOVEMBER 18, 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 August 18, 2004. The hearing officer determined that the compensable injury of appellant/cross-respondent (claimant) extends to the left knee and lumbar spine, and that claimant had disability from December 19, 2003, through the date of the hearing. Claimant appealed the implied determination that the injury did not extend to the neck and left shoulder. Respondent/cross-appellant (carrier) responded that the evidence shows that claimant did not injure her left shoulder or neck. Carrier appealed the determination that the compensable injury includes the lumbar spine and left knee. Carrier also appealed the disability determination on sufficiency grounds and contends that the hearing officer failed to make an express finding regarding whether the injury extended to the left shoulder and neck. The file does not contain a response from claimant regarding carrier's cross-appeal.

DECISION

We affirm.

We have reviewed the complained-of determination regarding disability and the determination that the compensable injury includes the lumbar spine and left knee and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are 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).

Claimant contends the hearing officer erred in determining that the compensable injury does not extend to the left shoulder and neck. In this regard, carrier notes that the hearing officer failed to make an express finding regarding whether the compensable injury extends to the left shoulder and neck. We agree that there is no express finding. It is clear from the hearing officer's discussion that the hearing officer determined that the injury does not include the left shoulder and neck. The hearing officer stated, "[t]he compensable injury does not extend to the neck and left shoulder." Both parties have acknowledged on appeal that the hearing officer made this determination even if there was no express finding of fact or conclusion of law regarding the left shoulder and neck. Therefore, we will review the implied finding that the compensable injury does not extend to the left shoulder and neck to see if that implied 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. We have reviewed the complained-of implied determination 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 implied

determination that the compensable injury does not extend to the left shoulder and neck 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, *supra*.

Claimant contends that the hearing officer erred in failing to find that the injury extends to her thoracic spine. Whether the injury extended to the thoracic spine was not an issue before the hearing officer and it was not tried by consent. We perceive no reversible error in this regard.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251-2237.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge