

## APPEAL NO. 93593

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on May 5, 1993, (hearing officer) presiding as hearing officer. The record closed on June 11, 1993. The sole issue at both the Benefit Review Conference and Contested Case Hearing was whether the claimant sustained a back injury in the course and scope of his employment between (date of injury). The hearing officer determined that the appellant, claimant herein, was injured in the course and scope of his employment sometime between (date of injury); that he did not lose time from work as a result of this injury; and, in addition, that claimant did not establish that a herniated disc suffered on (date of injury), was causally related to the earlier injury. Claimant appeals urging that the medical evidence establishes that the injury in (year) "may have started the process going . . . (that) could have led to the rupture that occurred (sic) over a year later. However one could implicate any other previous lifting event prior to (year) (sic) could have happened as well." Respondent, carrier herein, requests, somewhat anomalously, that the decision of the hearing officer including the finding of an injury in (year) be affirmed even though the carrier vigorously opposed this at the hearing. The carrier, on appeal, does not address the question of the causal connection between the (year) injury and the (year) injury.

### DECISION

Finding error in the findings and conclusions of the hearing officer, we affirm in part and reverse and render in part.

In the summer of (year), the claimant worked for (STS) as an iron-worker/rigger. STS is an independent contractor for (N) at the Center. The claimant was part of a crew whose primary job involved moving heavy items for (N). Sometime between (date of injury), claimant alleges that he injured his back as he and another worker attempted with the aid of hydraulic jacks to move a "robotic arm," described as an iron platform approximately four feet by four feet in dimension and weighing between 500 and 600 pounds. During the move, the claimant inadvertently pushed the down pedal on one of the jacks, thus causing the arm to fall toward some of (N)'s computer equipment. As the arm fell, the claimant grabbed it and held it up on one side until his coworker and the foreman on the project, (SJ), was able to reset the jack. As a result of this incident, the claimant suffered back and leg pain and walked with a noticeable limp. Pursuant to an informal agreement with the employer, the claimant performed light duties for an unspecified period of time. He made several visits to his chiropractor, (Dr. B), between December (year) and July (year), as his pain got steadily worse. However, he did not miss any work due to this injury until (date of injury).

On (date of injury), the claimant experienced a "pop" in his back as he was getting out of bed at home. Because the pain in his lower back, right leg, thigh and calf was severe, Dr. B referred him to (Dr. FR), an orthopedic surgeon who, after an MRI, diagnosed a "herniation of L4-5" and directed him to remain off work for an unspecified period of time.

This physician-patient relationship ended as a result of suggestions by Dr. FR that the claimant was potentially abusing the pain medication he prescribed. After several other referrals, (Dr. BA) performed a lumbar laminectomy to remove a large disc rupture at the L4/5 level on September 3, (year). Dr. BA authorized claimant's return to work on March 15, 1993. When he returned to work, he was advised that there was no work for him to do. He has not worked since (date of injury).

The hearing officer in pertinent part determined:

#### FINDINGS OF FACT

4. Claimant strained his back as a result of moving the robotic arm sometime between (date of injury). However, he did not lose time from work as a result of this incident.
5. Claimant's medical evidence reported that his back pain worsened significantly when he felt a pop in his back while getting out of bed on (date of injury). Claimant was unable to return to work after this incident.
6. Claimant did not establish that his claim of a herniated disc was causally related to the robotic arm incident that occurred sometime in (date of injury).

#### CONCLUSIONS OF LAW

4. Claimant did not establish that he suffered a herniated disc injury that arose out of and in the course and scope of his employment for [employer].

#### DECISION

Claimant did not establish that he suffered a herniated disc injury that arose out of and in the course and scope of his employment. His claim for workers' compensation benefits for a herniated disc injury is denied.

Because the claimant prevailed on the single issue announced by the hearing officer at the beginning of the hearing and agreed to by the parties, and the carrier specifically urges affirmance of that issue, we need not address it on appeal.

The hearing officer, however, reached findings and conclusions substantially beyond the issue framed at the hearing when she found the injury of (date of injury), outside the course and scope of employment. Article 8308-6.31(a) provides in pertinent part that ". . . issues not raised at the benefit review conference may not be considered except by consent of the parties or unless the commission determines that good cause existed for not raising

the issue at the earlier proceedings." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7 (Rule 142.7), Statement of Disputes, provides that "[a] dispute not expressly included in the statement of disputes will not be considered by the (contested case) hearing officer." This rule further specifies how to submit additional issues. This rule was not followed in this case. Although the pro se claimant addressed at length the circumstances and consequences surrounding the (date of injury), injury, the carrier chose not to address either the factual matters asserted by the claimant or the liability issues raised by these facts. Under these circumstances, we are unable to conclude that the issue of compensability for the (date of injury), injury was properly raised by the parties or that the parties were on notice to provide for an effective joinder of the issue. The matter surrounding the (date of injury), incident and whether it related to the (date), incident and the effects thereof was not and apparently has not been an issue raised in the dispute resolution process to this point in time.

In the past, the Appeals Panel has strictly construed Rule 142.7 or required a knowing waiver of its provisions by both parties. Texas Workers' Compensation Appeal Panel Decision Nos. 92195, decided on July 1, (year), and 92244, decided on July 24, (year). The claimant continues, even on appeal, to assume that by establishing the (year) incident, he will establish compensability for the (year) injury. The carrier declines to address the (year) incident. Thus, the parties continued to talk past each other and the issue has never joined. For these reasons, we affirm Findings of Fact 4 and 5 and reverse Finding of Fact 6, Conclusion of Law 4 and the Decision of the Hearing Officer. We note that the finding that the claimant sustained a compensable injury "sometime between (date of injury)," entitles him to medical benefits arising from that injury.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Lynda H. Nesenholtz  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge