APPEAL NO. 93817

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8303-1.01, *et seq.*). On August 19, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing officer determined that the appellant, (JS), claimant herein, did not sustain a hernia injury to his left side when he was injured on (date of injury), in the course and scope of his employment with (employer). The hearing officer further determined that claimant had agreed to an examination by a designated doctor to resolve disputed issues relating to maximum medical improvement (MMI) and impairment, and that he had also agreed to be bound by the conclusions of a Texas Workers' Compensation Commission-appointed designated doctor for purposes of opining whether he sustained a hernia on his left side. The hearing officer determined that claimant reached MMI on October 27, 1992, with a zero percent impairment rating in accordance with the designated doctor's report.

The claimant appeals and contends that he never agreed to be examined by a designated doctor for MMI and impairment, and that he thought this doctor was a carrier doctor. The claimant also contends that he has a left side hernia injury. The carrier responds by citing evidence in the record in support of the decision, and asks that it be affirmed.

DECISION

The decision of the hearing officer is affirmed.

The hearing decision fairly summarized the evidence, and will be repeated here with minor additions. Claimant, who had a Spanish language interpreter during the hearing, worked for the employer, an auto dealer, for fifteen years as a car painter. The evidence indicated that on (date of injury), a stool on which he was standing broke and he fell to the floor. The claimant said that he felt pain in the groin on both sides, but was more concerned about his right side because he had a hernia repair several years earlier. He continued working until May 25, 1992. On June 5th, he saw (Dr. B), who diagnosed a right inguinal hernia. Dr. B noted that claimant complained of left- side pain but he found no hernia on that side. Claimant had surgery to repair his hernia on July 8, 1992. On September 18, 1992, Dr. B opined that MMI would be reached on September 30, 1992, and that claimant would have a 10% impairment "due to subjective symptoms of mild pain on the right inguinal area." Claimant was released to work by Dr. B effective September 10, 1992.

Claimant said that sometime in October 1992, adjuster (Mr. A) called him on the telephone and told him he had to see a doctor or his benefits would be cut off. The doctor proposed was (Dr. M).

Mr. A testified that he did not threaten to cut off claimant's benefits and had no authority to do so. He stated that the carrier disputed Dr. B's impairment rating and that he contacted claimant to seek agreement relating to examination by a designated doctor. Mr.

A stated that Dr. M agreed to conduct such an examination. Mr. A said that he and claimant conversed in English about this and claimant asked to think it over until the next day. When Mr. A contacted the claimant the next day, he said that claimant agreed to the examination.

Mr. A stated that he probably did not mention that an agreed designated doctor had binding effect. He felt that he did, however, talk about the designated doctor as being the person to resolve disputes over MMI and impairment, and that the Texas Workers' Compensation Commission (Commission) would appoint a doctor if they could not agree. Mr. A's adjuster's notes indicate that he called a doctor to discuss a "possible IME." Mr. A testified that this was the term for an independent medical examination doctor, and that he probably used the incorrect terminology, and should have used "MEO" (medical examination order) or "designated" doctor. The carrier sent a letter on October 22, 1992, confirming the appointment to the claimant by certified mail. The letter was delivered October 26, 1992. The letter referred to Dr. M as the designated doctor who would determine the extent of his injury and assess a whole body impairment rating; a copy was sent to the Commission. Claimant stated that he did not understand what a designated doctor was, and could not read the letter because he could not read English, but that his wife read it to him. On October 27, 1992, he was examined by Dr. M, who found that he had reached MMI on that date, with a zero percent impairment.

In mid-October 1992, claimant began treatment with (Dr. W), whose impression was right groin pain due to a neuroma; his "extremely mild pain of the left side" indicated a weakness there "without a definite hernia."

At a benefit review conference on November 30, 1992, the parties entered a written agreement to abide by the decision of a doctor to be designated by the Commission to answer the question "whether the left side groin problems [are] related to the original injury of (date of injury)." (Dr. R) was designated by the Commission; he examined claimant on two days in December 1992, and reported: "Neither the history nor the examination corroborate the left inguinal hernia." Claimant testified that Dr. R did not examine his left side. (Unfortunately, a copy of the first benefit review conference report is not in the record.)

To counter the claimant's contention that a language barrier was a factor in his inability to understand the consequences of a designated doctor, the carrier presented evidence that claimant gave a statement to carrier's adjuster (not Mr. A) in English. The tape of the interview (also in evidence) indicates that claimant was fully responsive in English, and does not indicate a failure to understand the adjuster. (Mr. S), for the employer, stated that he worked with claimant approximately ten years and during that time never heard him speak Spanish. He stated that he and claimant had numerous conversations in English, and that claimant did not appear to lack understanding. Mr. S concluded that claimant read English because he would return various applications that occasionally needed to be completed, with the blanks properly filled out in English.

A claimant has the burden of proving that he was injured in the course and scope of his employment. Reed v. Aetna Casualty & Surety Company, 535 S.W.2d 377, 378 (Tex.

Civ. App.-Beaumont 1976, writ ref'd n.r.e). There must be evidence establishing a causal connection between the injury and the employment. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1990). In this case, not only Dr. R but Dr. B documented the lack of a left sided hernia. Claimant did not show good cause to show why he should not be bound by his agreement to allow Dr. R to opine on the extent of his injury. The hearing officer's determination that claimant did not have a left-sided hernia is sufficiently supported by the evidence, whether or not the claimant was deemed to have been bound by this agreement.

Claimant's assertions that he did not understand the consequences of the agreement for a designated doctor present the more troublesome issue. On the issue of impairment, the opinion of an agreed designated doctor is conclusive. Section 408.125(d). There is evidence that the carrier sent the confirmation letter required by the Tex. W.C. Comm'n., 28 TEX. ADMIN. CODE § 130.6(c) (Rule 130.6(c)) with a copy to the Commission. The claimant agreed that he received the letter, and that his wife read it to him. There is no evidence, one way or the other, concerning the Commission's role in confirming the agreement. However, we have held that this is not strictly required where a confirming letter is in evidence. *See* Texas Workers' Compensation Commission Appeal No. 92312, decided August 19, 1992. In this case, whether or not there was a meeting of the minds was for the hearing officer to decide. She may have determined that claimant's assertion that he did not understand or read English was not credible, and that, having received a confirmation letter which he stated he did not understand, he would have sought further information from the Commission. In any case, we cannot say that the determination of the hearing officer that there was an agreed designated doctor in this case is so against the great weight and preponderance of the evidence so as to be manifestly wrong or unjust. We would observe that the opinion of the designated doctor that claimant reached MMI with no permanent impairment is essentially supported by the preponderance of medical evidence.

The decision of the hearing officer is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge