APPEAL NO. 94105

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on November 16, 1993, in (city), Texas, before (hearing officer). The appellant, claimant herein, appeals the hearing officer's determination that the claimant did not sustain a compensable injury to the cervical and thoracic spine in addition to the compensable low back injury of (date of injury). He also contends that the hearing officer erred in determining that the report of the designated doctor is not contrary to the great weight of the other medical evidence and is thus entitled to presumptive weight. The respondent, hereinafter carrier, essentially contends the hearing officer's decision is supportable and should be affirmed.

DECISION

We affirm the hearing officer's decision and order.

It was not disputed that the claimant, who was employed by (employer), suffered an injury to his back on (date of injury), when, kneeling in a twisted position, he felt spasms and a "locking up" sensation in his lower back. He began treating with (Dr. A), two days later and was continuing to see Dr. A at the time of the hearing. Dr. A also referred the claimant to (Dr. H), a pain management specialist, who saw claimant over a period of time. Drs. A and H each issued a Report of Medical Evaluation (Form TWCC-69) which found claimant had reached maximum medical improvement (MMI) with a 30% whole body impairment rating. (Claimant's date of MMI was not an issue at the hearing.) In each doctor's report, the 30% rating was comprised of impairment ratings for the cervical, thoracic, and lumbar spine.

The claimant was also seen by (Dr. B), a designated doctor appointed by the Texas Workers' Compensation Commission (Commission). Dr. B gave claimant a five percent whole body impairment rating, based on the injury to claimant's lumbar spine alone. In his report Dr. B noted that claimant had had some treatments to his thoracic and cervical areas "but neither he nor the records indicate that these areas were involved in his injury . . . and it is not reasonable to include these in the impairment rating."

Claimant's position at the hearing and on appeal was that while his primary injury was to his lumbar spine, he had problems in his thoracic and cervical area for which he received treatment from the date of his first doctor visit. These included procedures, such as manipulation under anesthesia, for which the carrier paid without protest. Accordingly, claimant contends, the designated doctor's failure to examine and rate these areas renders his report against the great weight of the other medical evidence.

Medical reports in evidence show Dr. A's initial diagnosis on September 11th as "Dislocation/Subx to Lumbar Spine L-1 L-5 (Grade 2)," "Lumbar Intervertebral Disc Syndrome," and "Radicular Neuralgia." This basic diagnosis continued in medical reports dated in October 1991 and January 1992, except that in the report dated January 15, 1992, Dr. A noted muscle spasms in the cervical, thoracic, and lumbar areas. On November 2,

1992, Dr. A wrote that the claimant first came to him with lower back pain and that he had since treated him for "considerable low back pain." He also stated:

> Over the past six months, [claimant] has had a re-exacerbation of his symptoms. He has marked multiple spasms in the thoracic region and the cervical region. The CT scan done 9-12-91, shows circumferential annular bulging at L-5/S-1 moderate hypertrophic facet joint disease at L-4/5 on the left and L-5/S-1 bilaterally.

He noted that claimant had been referred back by Dr. H for manipulation under anesthesia of the cervical and thoracic spine, procedures which were performed once a day for five days.

After claimant's initial visit with him, Dr. H wrote that claimant's original complaint was of low back pain, with pain between his shoulder blades and up into his shoulders. Dr. H treated claimant with facet injections into L3-4, L4-5, and L5-S1 bilaterally.

On November 15, 1993, Dr. A wrote that "there appears to be a misconception as to [claimant's] complete diagnosis due to the fact that the HCFA 1500 claim forms only permit four (4) diagnoses to be printed out." He went on to state that claimant's complete diagnosis included subluxation complex T1-T12; chronic sprain/strain, thoracic; subluxation complex C1-C7; and chronic sprain/strain, cervical. He further said that claimant had, from the onset of his treatment, been receiving treatment to the cervical and thoracic areas of his spine as well as the lumbosacral. Attached diagnosis worksheets dated from September 12, 1991, included diagnoses of "Dislocation/Subx to Thoracic Spine T1-T12" and "Multiple Cervical Vertebrae."

The claimant said that in consultation with his supervisor a notice of injury was filled out shortly after the incident in question. An amended notice of injury dated February 3, 1993, added the cervical and thoracic spine under the section entitled, "Nature of injury."

The report of Dr. B, the designated doctor, indicates that that doctor noted claimant's complaints, including stiffness and pain in the intrascapular area and tenderness in claimant's thoracic area. He also summarized claimant's medical records, including Dr. H's TWCC-69 which assigned the 30% impairment rating. As mentioned earlier, he noted claimant's treatments to the thoracic and cervical areas but stated that these were not involved in claimant's original injury.

The Act defines "impairment" as "any anatomic or functional abnormality or loss existing after [MMI] that results from a compensable injury and is reasonably presumed to be permanent." Section 401.011(23). The TWCC-69, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1(g) (Rule 130.1(g)), provides that an impairment rating shall be based on the compensable injury alone. The extent of the compensable injury is a question of fact for the hearing officer, and the hearing officer in this

case determined, based upon the evidence, that claimant's original injury did not extend to the cervical and thoracic spine. Our review of the evidence does not indicate that this was error. As we stated in a case with very similar facts, all pains experienced at any time after an accident occurs can not automatically be attributed to an accident. *See* Texas Workers' Compensation Commission Appeal No. 93539, decided August 12, 1993. While claimant states he originally told Dr. A about his low back hurting all the way up to his shoulders, and Dr. A's diagnosis worksheets include the thoracic and cervical areas, Dr. A's initial medical report and subsequent reports limit the diagnosis and any narrative to claimant's lumbar spine. Dr. H's early reports also concentrate on the lumbar area only. To the extent there is any conflict within the medical evidence, that is a matter for the hearing officer to resolve. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The fact that the carrier may have paid for treatment to other areas of the back is not dispositive of the issue. *See, e.g.*, Texas Workers' Compensation Commission Appeal No. 94067, decided February 28, 1994.

Having determined that the hearing officer did not err in his determination that claimant's compensable injury was limited to his lumbar spine, we also conclude that his determination as to claimant's impairment rating was not in error. The 1989 Act provides that the report of a designated doctor appointed by the Commission is entitled to presumptive weight, and can only be overcome by the great weight of the other medical evidence to the contrary. Section 408.125(e). In this case, claimant does not contend the designated doctor's report was faulty in any respect other than its failure to assign an impairment rating to other areas of the spine; thus, we agree with the hearing officer that Dr. B's report was not overcome by the reports of Drs. H and A.

Upon review, we hold that the hearing officer's determination of the issues in this case is not so against the great weight and preponderance of the evidence as to be manifestly unfair and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We accordingly affirm the hearing officer's decision and order.

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Lynda H. Nesenholtz
Appeals Judge

CONCUR:

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Philip F. O'Neill
Appeals Judge

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Alan C. Ernst
Appeals Judge