APPEAL NO. 94351

This appeal arises under the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 16, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) (hearing officer) presiding as the hearing officer. The sole issue was whether the claimant's compensable injury to his back on (date of injury), was a producing cause of the claimant's left hip problems. The hearing officer determined that RP (claimant) did establish that his compensable injury was the producing cause of the calcified mass in his left hip region and that the claimant is entitled to medical benefits relating to treatment of this mass. The appellant, carrier, appealed the hearing officer's decision. The carrier argues that the hearing officer's decision that the compensable injury was the producing cause of the mass on the claimant's left hip should be overruled because the parties agreed to have a designated doctor render an opinion on cause, but that the designated doctor's findings were inconclusive and he did not render an opinion on the causal relationship. The carrier argues that as the designated doctor was inconclusive, the hearing officer erred by finding for the claimant. The claimant did not file a response.

DECISION

We affirm the hearing officer's decision and find no merit in the sole point of error raised.

The claimant spoke Spanish and testified through an interpreter at the hearing. The parties stipulated at the hearing that the claimant suffered a compensable back injury on (date of injury). The claimant testified that a calcification in his hip resulted from injections he was given for a compensable low back injury on (date of injury). The back injury occurred when he pulled and pushed on a wrench at work. The claimant testified that he had also sustained an earlier low back injury, from which he said he had fully recovered, and he also had sustained two gunshot wounds to the stomach from which he had scars. The claimant testified that he did not have any hip pain prior to the back injury and that he first noticed pain in his left hip after the accident occurred. He testified that his gunshot wounds were completely healed and showed the hearing officer that they were not in the same location as his hip pain.

The hearing officer admitted a benefit review conference (BRC) agreement dated October 11, 1993, between the claimant and the carrier that agreed that (Dr. D) would determine: (1) if surgery is needed to remove the mass on the claimant's hip, and (2) if Dr. D determined surgery was necessary, then Dr. D "will be asked to relate if the mass in [claimant's left hip] to the original date of injury. [Dr. D's] opinion on need for surgery and causal relationship shall be given presumptive weight by TWCC." However, the parties did not directly agree to accept Dr. D's opinion on causation as final. Dr. D, in his progress notes dated November 9, 1993, wrote that he agrees that surgery was needed. On the question of causal relation to the original injury, his report stated:

Indeed [the hip mass] could have been something that has matured over the time from when he was hurt, because initially this stuff does not start off calcified. Myositis ossificans is something that occurs just over time and the same thing with calcification of a hematoma. . . . with the information I have been given, I really can't say whether it is injury related. . . . [The original injury, pain, and trauma] could certainly produce this type of problem, but [the X-rays of the original injury are not of the hip area], because there was no calcification at the time he was hurt, and there is calcification now, there would be little doubt that it has arisen secondary to trauma.

Dr. D said he was unable to answer the causal relation question though it appeared to him that the original injury "could certainly produce this type of problem" to the hip.

According to other medical records, claimant complained of pain in his left hip beginning shortly after his accident. In July 1992, a lumbar puncture was performed on the claimant at the L3-4 level and he was injected with 10 cc's of Omnipaque into his subarachnoid space.

On September 8, 1992, (Dr. V), M.D., noted the injection in July of 1992 and that "he has had left sided pain since then and overall felt worse." Dr. V also noted her impression that "the area of abnormality in the left lumbar paraspinal muscles may represent local damage due to the gunshot wound, or it may represent localized denervation of posterior rami." It appears that the mass was detected in October 1992 after inflammation and swelling in his buttocks and lower back went down.

On June 7, 1993, claimant's treating doctor, (Dr. G) wrote that the mass in the left hip was diagnosed as "myositis ossificans" and that the claimant "has had blunt trauma in the left posterior hip as another diagnosis."

The extent of a compensable injury is a fact question for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 94105, decided March 7, 1994. Any pains that a claimant experiences at any time after an accident cannot automatically be causally related to the original accident. Texas Workers' Compensation Commission Appeal No. 93539, decided August 12, 1993.

A designated doctor's opinion has presumptive weight only as to issues of MMI and impairment. Sections 408.122(b); 408.125(e). We have in an earlier unpublished decision held that the Commission was not required to give presumptive weight to the opinion of a "designated doctor" to whom the parties committed resolution of a disability issue by a benefit review conference agreement. Texas Workers' Compensation Commission Appeal No. 92712, decided February 12, 1993. In the case at hand, the agreement goes a step further by "agreeing" that the Commission, which was not a party to

the agreement, shall accept the designated doctor's opinion as having presumptive weight on issues related to surgery and causal connection.

Although parties may stipulate to facts, they may not stipulate to the legal conclusions to be drawn from the facts of the case by the court. Smith v. Morris and Co., 694 S.W.2d 37 (Tex. App.-Corpus Christi, 1985, writ ref'd n.r.e.); City of Houston v. Deshotel, 585 S.W.2d 846 (Tex. Civ. App.-Houston [1st Dist.] 1979, no writ); Washington v. Law, 519 S.W.2d 953 (Tex. Civ. App.-Houston [14th Dist.] 1975, writ ref'd n.r.e.).

Moreover, it has been held, in the case of a disability insurance contract, that contract provisions limiting how a claimant would prove eligibility for benefits constituted an unenforceable contract as to rules of evidence. American Casualty Co. v. Horton, 152 S.W.2d 395, 398 (Tex. Civ. App.-Dallas 1941, writ dism'd). The court stated that rules of evidence are established either by statute or common law and are not the subject of a contract.

In this case, Dr. D's opinion is equivocal; he stated that he couldn't say that the condition was, or was not, related to the back injury. The hearing officer would not be bound here to give presumptive weight to Dr. D's failure to causally connect the calcified mass to the back injury.

The hearing officer is the trier of fact at the contested case hearing and is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given the evidence. Section 410.165(a). The findings of fact made by the hearing officer are supported by sufficient evidence. The hearing officer's decision was not against the great weight and the preponderance of the evidence. Pool v. Ford, 715 S.W.2d 629, 634 (Tex. 1986).

We affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR IN THE RESULT WITH SEPARATE OPINION:

I concur in the result in this case but can not subscribe to that portion of the principal decision holding that the parties can not enter into a binding agreement according presumptive weight to a mutually acceptable doctor's findings and opinions on the matter of causation. Agreements are specifically authorized under the 1989 Act and, are not, in my opinion, something to be discouraged. Indeed, if the parties to a controversy can resolve matters by way of agreement, it seems to me that satisfactory results are that much more attainable.

Section 401.011(3) defines agreement as "the resolution by the parties to a dispute under this subtitle of one or more issues regarding an injury, death, coverage, compensability, or compensation." The term does not appear to me to be limited as the principal opinion suggests. Rather than reviewing an agreement in terms of whether it is specifically authorized in the Act, I believe it better to start from the premise that parties can enter into an agreement that is not against the law, regulatory provision or public policy. While one might question the advisability of entering into an agreement which provides an expert's opinion will be given presumptive weight as opposed to being binding, I see no good reason why that should make the agreement void or non-binding. Of course, under the facts of this case the doctor's opinion was presumptive of virtually nothing and the hearing officer weighed the other medical evidence in making his determination.

Our unpublished decision cited in the principal decision, Appeal No. 92712 does not hold or suggest that an agreement of the nature involved in this case is not valid. There was no agreement in that case that the doctor's report would be given presumptive or binding weight. Rather, the agreement to be examined by a doctor "designated" by the benefit review officer to make a determination did not per force (and without any indication that such was the intent of the parties) result in presumptive weight being attached to the doctor's findings. The decision only stands for the proposition that the presumptive weight accorded a designated doctor's maximum medical improvement and impairment rating does not necessarily apply to his other medical opinions. It does not stand for the proposition, in my opinion, that parties are barred from so agreeing.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR IN THE RESULT:

Philip F. O'Neill
Appeals Judge