

APPEAL NO. 980260  
FILED MARCH 26, 1998

On January 13, 1998, a contested case hearing (CCH) was held in (City), Texas, with (hearing officer) presiding as the hearing officer. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. §. 401.001 *et seq.* (1989 Act). The issue at the CCH was whether the (1993), compensable injury of the appellant (claimant) is a producing cause of his current herniated disc, entitling him to reasonable and necessary medical treatment. The hearing officer determined that claimant's (1993) compensable injury was not a producing cause of his "current lumbar herniated disc" and that claimant is not entitled to "medical treatment therefor." On appeal, claimant contends that the hearing officer erred in making this determination and in determining that claimant is not entitled to medical benefits for treatment of the herniation. Claimant also asserts that the hearing officer abused his discretion in failing to consider an issue that was reported out of the benefit review conference (BRC) regarding carrier waiver. Respondent (carrier) responds that sufficient evidence supports the hearing officer's determinations and that we should affirm the decision and order.

DECISION

We reverse and render.

Claimant contends that the hearing officer erred in determining that claimant's (1993) compensable injury was not a producing cause of his "current lumbar herniated disc" and that claimant "is not entitled to medical benefits therefor."

Claimant testified and it was not disputed that he sustained a compensable back injury while lifting at work on (1993). Medical records indicate that claimant was treated for a low back L5-S1 injury and that the designated doctor, Dr. KA, rated a lumbar injury involving the L5-S1 level, but said there was no herniation. Dr. WH, claimant's treating doctor in 1993, stated in an August 1993 letter that claimant has a "ruptured disc at the L5-S1 interspace." A July 1993 MRI report states that the "extension of the disc signal in the midline is compatible with a central disc herniation." A September 1993 MRI report states, "findings suggest an almost 5 mm. HNP to the left of midline at L5-S1." Dr. OS signed a Specific and Subsequent Medical Report (TWCC-64) in January 1994 stating, "myelogram and CT scan shows lumbar disc bulge mild at L5-S1." An MRI report signed by Dr. SL in April 1994 stated that claimant has a "diffuse disc bulge at L5-S1."

Claimant was in a car accident on October 7, 1994. However, the hearing officer stated in the decision and order that claimant had "some degree of herniation" before he was in the car accident. In 1995, claimant saw Dr. HI regarding his 1993 compensable injury. Dr. HI said:

[Claimant] was injured while at work on . . . (1993 injury). On 7/30/93, *he underwent a lumbar MRI scan which clearly demonstrated a herniated disc at L5-S1. . . . We have recently studied him with discography and the discogram confirms L5-S1 disc pathology, correlating quite well with the MRI scan done on 7/30/93. Thus, [claimant's] current condition can be clearly attributed to his work-related injury, as documented by the previous MRI scan as correlated to his current discogram. [Emphasis added.]*

At the CCH, carrier repeatedly asserted that it was not asserting sole cause. During closing argument, carrier again stated that sole cause did not apply and that "this is not a sole cause case." Carrier stated that it was merely holding claimant to "his burden of proof" regarding producing cause.

The record reflects that Dr. HI was not attempting to treat claimant in 1997 for a new disc injury and to somehow relate it to the 1993 compensable injury. Instead, he sought to treat claimant for the *same* disc injury and even referred to the same MRIs taken in 1993. We fail to see how the hearing officer could have determined that the (1993), compensable injury is not a producing cause of claimant's "current lumbar herniated disc," that Dr. HI wanted to treat given the fact that Dr. HI is referring to the same disc lesion diagnosed in 1993. There is a difference in medical opinion regarding whether this L5-S1 disc lesion is a "herniation" or merely a "bulge" and whether

claimant needs surgery for this condition. However, this does not change the fact that the “current” lesion from the 1993 MRIs that is now called a “herniation” by Dr. HI is the same disc lesion that was part of claimant’s injury in 1993 and rated by the designated doctor. Accordingly, we conclude that the hearing officer’s determination that claimant’s (1993) compensable injury is not a producing cause of his “current lumbar herniated disc” is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We note that section 408.021 provides that an injured employee "is entitled to all health care reasonably required by the nature of the injury as and when needed." To the extent that the issue of reasonable and necessary medical care was raised, we note that this issue is for the Commission’s medical review division and not for the hearings division.

Claimant also contends that the hearing officer erred in failing to add an issue on whether carrier waived the right to contest compensability of the claimant’s condition. We have held that the hearing officer did not have jurisdiction to consider the medical benefits issue. However, we would also note that this case does not concern a waiver issue regarding whether carrier timely contested the *compensability* of, or the extent of, an injury. Here, carrier accepted the claim and never denied that claimant had an injury to the L5-S1 level of his spine. In fact, at one point carrier’s health management services company stated in an October 23, 1993, letter, that “the two MRI’s done in July and September of 1993 confirmed disc herniation and HNP . . . .” The issue before the hearing officer did not involve compensability and the carrier waiver provisions do not apply.

We reverse the hearing officer's determinations that the (1993), compensable injury is not a producing cause of claimant's current lumbar herniated disc and that "claimant is not entitled to medical benefits therefor," and render a decision that the (1993), compensable injury is a producing cause of claimant's current lumbar herniated disc.

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Judy Stephens  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge