

APPEAL NO. 990076

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 4, 1999. The single disputed issue was: "Is Claimant's [appellant] \_\_\_\_\_ injury a producing cause of his right hip pain syndrome?" The hearing officer concluded that it was not. The claimant appeals this determination, expressing his disagreement with it. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Reversed and rendered.

The claimant testified that on \_\_\_\_\_, a load he was carrying shifted, and as he tried to regain control of it, he felt a "pop" in his right hip. He was treated by Dr. G, who prescribed pain medication and therapy. Dr. G's medical records reflect an injury with symptoms of low back pain and pain in the area of the groin/pelvis. X-rays of the lumbosacral spine were normal. Right hip x-rays showed "minimal sclerotic changes." In a report of August 14, 1991, Dr. W, a referral doctor, had the impression of pain "in the ischial region on the right, probably musculoskeletal in nature." On January 17, 1992, Dr. G completed a Report of Medical Evaluation (TWCC-69) in which he certified the claimant reached maximum medical improvement (MMI) on that date and assigned an eight percent impairment rating (IR). The components of the eight percent were not explained, but an examination of the supporting documentation reflects that the hip was examined with range of motion (ROM) less on the right than left. It was not clear whether these ROM figures formed the basis for part or all of the IR.

According to the claimant, he continued to have right hip pain essentially since the date of injury and in 1993 sought the help of the Texas Rehabilitation Commission (TRC) to cross-train into a less physically demanding occupation. The TRC referred the claimant for a physical examination with a complaint of right hip pain. The results were no "orthopedic pathology to account for his symptoms." The claimant said he continued working with some relief from over-the-counter pain medication until June 1998. At that time he was working with his son to repair a truck transmission. When he slid out from under the truck and stood up to start walking, he said, his knee and hip "folded up" and he "went crashing down." The claimant acknowledged a prior low back injury in 1980 and an ankle twisting in July 1997. He said the latter ankle incident was so minor he never filed a workers' compensation claim for it. It was his position that his current right hip pain reflects a continuation of his original right hip injury of \_\_\_\_\_.

X-rays of the right hip taken on July 26, 1998, showed small areas of "well-corticated calcification/ossification" of the right acetabulum which "likely represents a small osteophyte or an old well-corticated avulsion fracture." No evidence of acute fractures or lesions were seen. Dr. O examined the claimant on November 9, 1998, at the request of the carrier. In

his report of this examination, he described the claimant as "injured in 1991 with injuries in the right hip and pelvic areas" and said he was asked for a "diagnosis and prognosis." He concluded that it would be difficult to relate the current hip condition to 1991, and that an MRI, if normal, would rule out any connection. The MRI suggested by Dr. O was not done.

At the CCH, the parties stipulated to a \_\_\_\_\_, "compensable injury" without further specification of what the injury was or the body part affected. In her discussion of the evidence, the hearing officer stated that "[c]laimant was released in January of 1992, on which date he was certified at MMI and given an 8% [IR]. An x-ray of the right hip on February 12, 1993 was normal." She made the following pertinent finding in Finding of Fact No. 2: "The evidence shows that any right hip injury sustained by Claimant as the result of his \_\_\_\_\_, injury was a soft-tissue injury, and had resolved in January of 1992." (Emphasis added.) She therefore concluded that the \_\_\_\_\_, compensable injury is not a producing cause of his right hip pain syndrome.

Although the parties stipulated a "compensable injury," the case was litigated at the CCH as if the compensable injury included a right hip injury. The carrier does not appeal Finding of Fact No. 2 which, after reviewing the hearing officer's discussion portion of the decision and order, we construe, despite the use of the word "any," as a finding that the original compensable injury included the right hip. Given the existence of a compensable right hip injury in 1991 and an issue of whether this injury was a producing cause of the current right hip pain, we perforce face the issue of whether the issue is really one of reasonably required medical care only and not income benefits. If the former, the question is properly presented to the Division of Medical Review and the hearing officer and Appeals Panel have no jurisdiction to resolve the question.

We believe our decision in Texas Workers' Compensation Commission Appeal No. 981133, decided July 15, 1998, is controlling. In that case, the issue was whether the prior compensable injury was a "producing cause" of the "current lower back condition, L4-5." The hearing officer found it was not. We reversed and rendered. In so doing, we noted that this was "not an extent-of-injury case." Rather, because the parties agreed that the prior injury dealt with the lumbar spine and L4-5 and the current condition also concerned L4-5, the dispute was really over the claimant's lifetime entitlement to reasonably required medical care as provided in Section 408.021. In the case we now consider, the issue was framed in terms of "producing cause." And while it does not expressly state that the prior injury was to the right hip, the parties litigated the issue in terms of a prior right hip injury. Consistent with unappealed Finding of Fact No. 2, we too are compelled to conclude that the original injury was a right hip injury and construe the issue as whether the claimant's compensable right hip injury of \_\_\_\_\_, was a producing cause of his current right hip pain syndrome. Thus, this was not an extent of injury case, or a case involving alleged alternative causation and a subsequent injury, but a case of reasonably required medical care over which the hearing officer had no jurisdiction. See *also* Texas Workers' Compensation Commission Appeal No. 981017, decided July 1, 1998; Texas Workers' Compensation Commission Appeal No. 981220, decided July 15, 1998; and Texas Workers' Compensation Commission Appeal No. 981110, decided July 10, 1998. Carrier

did not assert at the CCH that another injury was the sole cause of the current hip complaint.

We do not believe that the finding that the right hip injury "resolved" acts to confer jurisdiction on the hearing officer. This, too, is simply another way of saying that, for this injury, no further medical care is reasonably required. If the claimant had not sustained a right hip injury in 1991, and was arguing that his current right hip condition naturally resulted from the initial injury, then there would be jurisdiction to decide the case. That is not, however, the posture of this case. If the carrier sought to be relieved of its obligation to pay for reasonable and necessary medical care in this case, including recommended dynamic tests and an MRI, it must file the requisite dispute in accordance with Section 408.027 and Rule 133.104 [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.104], *et seq.*

We reverse the decision and order in this case and render a decision that the hearing officer did not have jurisdiction to resolve the issue of whether the compensable right hip injury is a producing cause of the claimant's current right hip condition. The claimant should present to the division of Medical Review, any dispute over the denial of medical care.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Judy L. Stephens  
Appeals Judge