APPEAL NO. 990078

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 9, 1998, a hearing was held. He (hearing officer) determined that the appellant's (claimant) lumbar strain injury was not a producing cause of epididymitis, hernia, and thoracic strain. In addition, he determined that claimant had no disability from August 19, 1998, to September 15, 1998, and from October 12, 1998, to the date of the hearing. Claimant asserts that denial of his motion to amend an issue was incorrect; he also states that the first issue was whether the compensable injury "included" additional injuries and it was error to determine that claimant did not show that the lumbar strain was "a producing cause" of the alleged injuries. Claimant also refers to medical evidence in saying that findings, as to the alleged injuries not being compensable, should be reversed. Claimant also states the hearing officer found that claimant had no disability because of the alleged injuries, but states that the compensable lumbar injury caused disability. Respondent (carrier) replied the decision should be affirmed.

DECISION

We affirm in part and reverse and remand in part.

Claimant worked for (employer) on _____, the date that the parties agreed was the date of injury of a compensable lumbar strain. Claimant was not sure of the date he began working for employer this time (he had worked for employer earlier in 1998 but had been released from an assignment and told that he would not be placed in another because of attendance matters), but thought it was since July 14, 1998, when he took a drug test.

There was no dispute that claimant had a compensable lumbar strain, although the records in evidence and claimant's testimony indicate no particular occurrence on _____ but rather a developing condition--claimant testified he basically moved boxes of books; the boxes were said to weigh 35 to 45 pounds.

Claimant sought to amend the issue relating to whether the alleged epididymitis, thoracic strain, and hernia were compensable; he did not, however, question the "producing cause" phrase which was part of the issue but only requested that "hernia" be changed to "abdominal injury" and that "thoracic strain" be changed to "thoracic injury." The hearing officer had previously denied claimant's motion on the basis that no medical records were provided to support such a change; at the hearing, the carrier objected to any change in regard to the hernia, and the hearing officer maintained that no change would be made. With the hearing officer citing a lack of medical evidence in not granting the motion to amend, no abuse of discretion is evident, and no reversible error occurred. In addition, since the hearing officer's finding of fact that the alleged injuries were not compensable followed the language of the issue as to producing cause (for which there was no request for change), he did not err in phrasing the finding of fact in that manner as opposed to stating whether the compensable injury "included" the alleged injuries.

The medical evidence was somewhat conflicting as to all the alleged conditions. However, as stated by the hearing officer, there was significant medical evidence indicating that no hernia was found, that epididymitis is an infection that was either found and adequately treated, or not found, at a certain time; at any rate the epididymitis occurred or was said to have occurred at a time when claimant was having a sexual dysfunction with at least one doctor opining that he did not see a connection between any of claimant's alleged injuries and the compensable injury. On the other hand, there was some medical evidence that a lifting injury could force urine into a cavity, and that would produce the epididymitis. The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. He could choose to give more weight to some medical evidence than he did to other medical evidence. *See* Texas Workers' Compensation Commission Appeal No. 970834, decided June 23, 1997. Finally, an MRI was read as normal which included part of the thoracic spine. In addition, the hearing officer commented in his Statement of Evidence about claimant's inconsistencies, reluctance to answer questions, and credibility problems. The evidence sufficiently supports the determination that the epididymitis, hernia, and thoracic strain are not compensable. The determination in regard to the first issue, injury, is affirmed.

The parties agreed, as stated by the hearing officer, that the carrier did not waive the right to dispute compensability of the alleged injuries found not to be compensable.

The case must be remanded because only one finding of fact addressed disability and it was limited to a statement that claimant was not unable to "obtain and retain" work "as a result of the claimed injuries of epididymitis, hernia, and thoracic strain." Although there is evidence of claimant being returned to full duty as of August 10, 1998, by "(Clinic)" as signed by a "SS" (whose name is not listed as a physician on other documents of "(Clinic)" in which 11 physician's names are listed), another "(Clinic)" document dated August 17, 1998, signed by a listed physician, gives a lifting limitation with a diagnosis of lumbar strain and says full duty return to work is undetermined. Another, similar form, dated August 19, 1998, from "(Clinic)" appears to be signed by "SS" and again lists lumbar strain and says return to full duty is undetermined. Other statements concerning work appear later in the year, but the ones described, all from the same clinic, require a finding of fact from the hearing officer as to whether or not the compensable lumbar strain was or was not a cause of disability at any time within the issue as stated--August 19th to September 15th and October 12th to the day of the hearing. (We note that the issue is written once as December 12, 1998, to the present, but the hearing officer correctly addressed October 12, 1998, in his finding of fact.) The decision and order include a conclusion of law that there was no disability in either time period, but without a finding of fact addressing the compensable lumbar strain, in this case, a finding of fact sufficient to support that conclusion cannot be implied.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings,

pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge