

APPEAL NO. 990202

On January 7, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the CCH were: (1) whether the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. P on October 15, 1996, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)); and (2) "is the compensable injury a producing cause of the claimant's [appellant] current low back complaints?". The claimant requests reversal of the hearing officer's decision that: (1) the first certification of MMI and IR assigned by Dr. P on October 15, 1996, became final under Rule 130.5(e); (2) the claimant reached MMI on October 9, 1996, with an IR of seven percent for the compensable injury of _____; and (3) the claimant's compensable low back injury of _____, is not a producing cause of the claimant's current low back complaints. No response was received from the respondent (carrier).

DECISION

Affirmed.

The claimant worked as a salesperson in the employer's department store. She testified that she had back pain while moving furniture at work on _____. The parties stipulated that the claimant sustained a compensable low back injury in the course and scope of her employment on _____. Medical records state that the claimant sustained a previous back injury at work in (prior date of injury). The claimant was initially treated by Dr. C for her injury of _____. Dr. C noted that the claimant complained of back pain, right hip pain, and right leg pain and diagnosed the claimant as having an acute traumatic lumbar sprain complicated by a degenerated lumbar disc. He noted that an x-ray showed a narrowed intervertebral space at L4-5. He released the claimant to light-duty work and treated the claimant with physical therapy. It is uncertain how long the claimant was off work. She said that she returned to light-duty work in August 1996, but also said that she missed only three days of work.

Dr. C referred the claimant to Dr. S. In a report dated March 18, 1996, Dr. S diagnosed the claimant as having lumbosacral osteoarthritis with probable spinal stenosis. A radiologist reported that the claimant's CT scan of March 20, 1996, which was done from L2 to S1, showed no evidence of a disc bulge or disc herniation at L2-3, a mild disc bulge without evidence of disc herniation at L3-4, a disc bulge at L4-5 which appeared to flatten the thecal sac and for which a small herniation could not be excluded, and no evidence of a disc bulge or herniation at L5-S1. Dr. S noted that the claimant had low back pain with pain and numbness into the right leg, stated that the claimant should continue on light duty, and referred her to Dr. L for neurological testing. Dr. L reported on June 13, 1996, that an EMG study was normal and he diagnosed the claimant as having a lumbar strain and a bulging L4-5 disc without a neurologic deficit. Dr. L wrote that the claimant was neurologically intact and that he could not find any objective evidence of myelopathy, radiculopathy, or

spinal stenosis, and that the claimant's pain is primarily musculoskeletal in origin. Dr. S wrote on June 27, 1996, that Dr. L had found no evidence of nerve root impingement, that the claimant continued to complain of low back pain radiating down her right leg, that she should continue on light duty, and that she could have epidural and facet injections. On August 20, 1996, Dr. S wrote that the claimant was significantly improved with injections but still had pain with heavy activity, that she is permanently limited to light duty, and that she was approaching MMI.

Dr. S referred the claimant to Dr. P for an impairment evaluation. Dr. P examined the claimant on October 9, 1996, and he noted that the claimant continued to complain of right hip and low back pain with radiating numbness down the right leg and that the CT scan showed no evidence of spinal stenosis. Dr. P diagnosed the claimant as having a "soft tissue injury to the lumbar spine, predominantly sacroiliac joint and piriformis muscle on the right" and he certified in a Report of Medical Evaluation (TWCC-69) dated October 15, 1996, that the claimant reached MMI on October 9, 1996, with a seven percent IR. The seven percent IR assigned by Dr. P was the first IR assigned to the claimant. At the bottom of Dr. P's TWCC-69, Dr. S noted his agreement with the MMI date and IR certified by Dr. P. In a letter dated October 23, 1996, the Texas Workers' Compensation Commission (Commission) advised the claimant that Dr. P had reported that she reached MMI on October 9, 1996, with a seven percent IR and that if she did not agree with the MMI date or the IR she had to dispute those issues by contacting the Commission within 90 days after she received notice. The claimant testified that she did not dispute the certification of MMI and IR within 90 days because Dr. S and Dr. L told her that her tests had not shown anything.

The claimant said that she was assigned to light duty at work but worked 10-hour days and that she worked in pain. She said that she went to a chiropractor in January 1998 because her back was hurting. The claimant did not return to Dr. S until May 7, 1998, at which time Dr. S noted that the claimant complained of worsening low back pain which had existed since he last saw her in 1996. He noted that claimant also had right leg pain and recommended an MRI. The lumbar MRI report of May 14, 1998, states findings of prominent defects at L1-2, L4-5, and L5-S1; a presumed hemangioma in L1; mild disc bulge at L3-4 and L4-5 causing flattening of the thecal sac, but no disc herniation at those levels; an essentially normal L5-S1 interspace; and a prominent disc herniation at L1-2. On May 28, 1998, Dr. S referred the claimant back to Dr. L for neurological testing and wrote that the claimant would be off work. The claimant said that she has not worked since May 27, 1998.

Dr. L reported on June 12, 1998, that the claimant had had persistent low back pain and now had radiation into both legs. Dr. L said that the MRI scan demonstrated mild bulging or central herniation at L1-2, L4-5, and L5-S1, without spinal stenosis or compression of the exiting nerve roots. Dr. L wrote that an EMG was normal and he diagnosed the claimant as having low back pain of musculoskeletal origin and degenerative changes of the lumbar spine. He noted that the claimant was neurologically intact and that he could find no objective evidence of myelopathy, radiculopathy, spinal stenosis,

plexopathy or entrapment neuropathy. On June 25, 1998, Dr. S wrote that he had nothing further to offer the claimant and that he was releasing her from his care. In a statement dated July 6, 1998, Dr. S wrote that the claimant's diagnosis was sacroiliac inflammation.

The claimant changed treating doctors to Dr. E on July 22, 1998, and Dr. E wrote on August 6, 1998, that the claimant complained of pain primarily on the right side of her back that occasionally runs down her right leg to her foot. Dr. E stated that he reviewed the MRI of May 14, 1998, and that it revealed mild degenerative disc disease at multiple levels and that the CT scan of March 20, 1996, revealed multiple level facet arthropathy. He said that on one MRI report there was a suggestion of a disc herniation but that that was not entirely clear. Dr. E wrote on August 12, 1998, that he had diagnosed the claimant as having "multiple degenerative disease" and had advised her not to return to work. Dr. M performed a lumbar myelogram and postmyelogram CT scan on the claimant on August 14, 1998, and he reported that the lumbar myelogram showed a disc herniation into the left lateral recess and left neural foramen at L1-2, a moderate disc bulge at L3-4, and mild disc bulges at L2-3, L4-5, and L5-S1, and that the CT scan confirmed a disc herniation into the left lateral recess and left neural foramen at L1-2 and disc bulges of varying degrees through the remainder of the lumbar spine.

Dr. E wrote on August 24, 1998, that he had reviewed the myelogram and CT scan of August 14, 1998, that the claimant has significant degenerative disc disease throughout the lumbar spine with facet arthrosis at each level, that there is a small disc herniation at L1-2 that is eccentric to the left side, that the claimant continues to have low back pain with some radiation down her right leg, and that he had explained to the claimant that the imaging studies do not show any surgical lesion. In a statement dated August 24, 1998, Dr. E diagnosed the claimant as having degenerative disc disease.

In a letter dated October 28, 1998, Dr. St, D.C., who is apparently the chiropractor the claimant saw in January 1998, wrote that he treated the claimant for her lower back, that her condition turned out to be a lumbar disc herniation that in all medical probability was the direct result of an on-the-job injury while employed by the employer, and that the claimant has osteoarthritic degeneration in the lumbar spine secondary to the disc herniation.

Dr. B reviewed the claimant's medical records at the carrier's request and he wrote on October 8, 1998, that "[i]t is my opinion that the treatment that she is seeking from [Dr. E] since May of 1998, is not related to her workers' comp claim for alleged injury of _____, but is rather related to normal lumbar degenerative disc disease seen in a 58 year-old female."

Dr. E wrote on October 22, 1998, that the claimant was having back pain with left leg pain, that she does not have any neurological deficits, that she had been found to have a disc herniation at L1-2, and that in his opinion the disc herniation at L1-2 is the result of her _____ accident.

According to a Dispute Resolution Information System entry of September 11, 1998, the claimant contacted the Commission on that date and stated that she wanted to dispute the MMI date and IR because the 1998 imaging studies showed a herniation at L1-2. The claimant said that she did not see the report of the 1996 CT scan until she picked up her records from Dr. S's office around August 1998. She said that she has been hurting in the same place in her low back since her accident.

Rule 130.5(e) provides that the first IR assigned to an employee is considered final if the rating is not disputed within 90 days after the rating is assigned. It is undisputed on appeal that on October 28, 1996, the claimant received written notice from the Commission of the first certification of MMI and IR assigned by Dr. P and that the claimant first disputed the first certification of MMI and IR assigned by Dr. P on September 11, 1998, which was more than 90 days after October 28, 1996. The hearing officer concluded that the first certification of MMI and IR assigned by Dr. P on October 15, 1996, became final under Rule 130.5(e). The claimant contends that the herniated disc at L1-2 revealed in the diagnostic studies of 1998 shows a misdiagnosis. The hearing officer found that there was no compelling medical evidence to invalidate the first certification of MMI and IR. The hearing officer also determined that the claimant's compensable low back injury of _____, is not a producing cause of the claimant's current low back complaints. The hearing officer is the judge of the weight and credibility of the evidence. As the finder of fact, the hearing officer resolves conflicts in the evidence including the medical evidence. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. We conclude that the hearing officer's decision on the disputed issues is supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

Since it is undisputed that the claimant sustained a compensable low back injury on _____, under Section 408.021, she is entitled to all health care reasonably required by the nature of the injury as and when needed.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge