

APPEAL NO. 991003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 20, 1999. He (hearing officer) determined that the \_\_\_\_\_, compensable injury of the respondent (claimant) "is a producing cause of the spinal instability at L5-S1, resulting in surgery, including fusion at L5-S2, performed on January 7, 1999." Appellant (carrier) appeals, contending that the spinal instability was due to an ordinary disease of life. Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that the compensable injury "is a producing cause of the spinal instability at L5-S1, resulting in surgery, including fusion at L5-S2, performed on January 7, 1999." Carrier asserts that claimant had a tumor on his spine, that this was an ordinary disease of life, that the tumor removal was the cause of the spinal instability and need for spinal fusion, and that, therefore, the spinal instability was not related to the compensable injury.

The aggravation of an ordinary disease of life may be a compensable injury in its own right if the aggravation occurred in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 941577, decided January 9, 1995. However, "there must be an active incident or sequence of incidents which are alleged to have resulted in the enhancement, acceleration or worsening of the pre-existing condition," as distinguished from a "mere recurrence of symptoms inherent in the etiology of the preexisting condition that has not resolved." Texas Workers' Compensation Commission Appeal No. 94168, decided March 25, 1994; Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994.

The comment to 2 STATE BAR OF TEXAS, PATTERN JURY CHARGES, PJC 25.03 (1989) contains the following definition of producing cause:

"Producing cause" means an injury or condition which, either independently or together with one or more other injuries or conditions, results in any incapacity or any loss of use of a particular member of the body, and without this injury or condition, the incapacity or loss of use would not have occurred when it did.

There may be more than one producing cause of an event. Texas Workers' Compensation Commission Appeal No. 971839, decided October 23, 1997.

Claimant testified that he had been working as a maintenance supervisor for (employer). He said that on \_\_\_\_\_, he was walking out to check on a report that a fence had blown over. He said that when he arrived, wind blew the wood fence over onto him and pinned him against a chain link fence. He testified that he struggled free and crawled over the chain link fence, dropping down six feet to the other side. He said he had a “shiner” and his whole left side hurt. Claimant testified that he went to see Dr. W, who gave him medications and took him off work. Claimant said that the next day his back pain intensified, so he went back to Dr. W’s office. He said his symptoms worsened over time, that he felt stinging and a “charley horse” sensation in his legs, that he had trouble walking, and that a spinal tumor was eventually diagnosed. Claimant denied prior back problems or injuries. Claimant said he underwent back fusion surgery and that his symptoms have lessened since that time.

The evidence was in conflict regarding whether claimant’s compensable injury is a producing cause of spinal instability. Although there was evidence to the contrary, Dr. MI, claimant’s surgeon, said:

In my professional opinion, I believe that the compensable injury was a contributing factor requiring removal of the tumor. I believe this tumor was asymptomatic and became symptomatic secondary to his on the job injury. This tumor may have turned symptomatic in the future, but the [compensable injury] accelerated the edema and swelling in the tumor that made it become symptomatic.

The hearing officer found that the compensable injury did not cause the nerve tumor, but that either the injury or its aftermath aggravated it and “contributed to it becoming symptomatic.” The hearing officer stated that the compensable injury “led naturally to the instability, which required the fusion.” Whether there was an aggravation of the ordinary disease of life that was the producing cause of claimant’s spinal instability was a fact question for the hearing officer. After reviewing the evidence, we conclude that the challenged producing cause finding is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The hearing officer could rely on the evidence from claimant and Dr. MI and conclude that claimant’s 1998 compensable injury was a producing cause of his spinal instability.

Carrier contends the hearing officer erred in determining that the compensable injury was a lumbar strain with a bulging disc. In a July 28, 1998, report, Dr. M stated that claimant had a bulging disc, as shown by his myelogram/CT scan. A May 8, 1998, MRI report states that claimant has an L5-S1 “central” disc protrusion with disc material mildly effacing the thecal sac without resulting stenosis. It also said that “at S1-S2, there is a large 2.5cm Tarlov or nerve root cyst filling the left lateral recess and the left neuroforamen.” In a February 1999 report, Dr. M noted that claimant was still experiencing some symptoms post-operatively but that “he may not require other procedures for the L5-S1 disc disruption.” From this evidence, the hearing officer could determine that claimant’s injury included a bulging disc.

We affirm the hearing officer's decision and order.

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Judy Stephens  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Alan C. Ernst  
Appeals Judge