APPEAL NO. 991222

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 December 7, 1998. The issues at the CCH were whether the respondent (claimant), who had been injured while employed by a company insured by appellant carrier (Carrier 1) on _____, sustained a new injury on (subsequent date of injury), while employed by (Employer 2), who was insured at the time by respondent carrier (Carrier 2). The hearing officer had issued two separate decisions, which, when read together, contained conflicting findings that were not reconciled. Carrier 1 appealed, and raised as a point of error the fact that two separate decisions had been issued. The Appeals Panel agreed that there was a fundamental error in the issuance of two decisions, and remanded the decision in Texas Workers' Compensation Commission Appeal No. 990133, decided March 8, 1999. The hearing officer issued a new decision, albeit one in which she still undertook two separate findings of fact and conclusions of law under two different docket numbers. Nevertheless, she reconciled previously conflicting fact findings by evaluating the evidence as not indicating an aggravation of prior herniated discs, but as indicative of a lumbar strain occurring on (subsequent date of injury), for which Carrier 2 is liable. The hearing officer observed that Carrier 1 remained liable for the effects of the _____, herniated disc injury, potentially for a lifetime of medical benefits, and that she retained no jurisdiction to adjudicate the reasonableness and necessity of such medical treatment. She noted that Carrier 1 was no longer liable for any income benefits. The hearing officer noted that her previous reference in one of the separately issued decisions to an "aggravation" of the previous injury was in error.

Carrier 1 has once more appealed, and now argues that, although it complained in its first appeal of the issuance of two separate decisions, it never intended the relief granted by the Appeals Panel, which was remanded for issuance of a single decision. It argues that the hearing officer's previous decision issued for Carrier 2 became final because it was not appealed. It then argues that it had a justiciable interest in the outcome of that other dispute (namely, whether a new injury occurred on (subsequent date of injury)). Carrier 1 argues that the hearing officer did not hold a new evidentiary hearing and thus was without basis for changing the basis of her decision from aggravation to "new injury," *i.e.*, lumbar strain. Carrier 1 argues that the great weight of evidence supports the findings of fact made by the hearing officer in her original decision (aggravation of herniated discs). Carrier 2 responds that the hearing officer has followed the instructions of the Appeals Panel in reconsidering the evidence and making findings as to the nature of the second injury, and that the essence of the appeal is an advisory opinion on whether Carrier 1 should be liable for medical benefits in the future. Carrier 2 argues that issuance of a single decision to replace two void decisions was also in line with the decision of the Appeals Panel. There is no response from the claimant. Carrier 2 has not appealed the determination that the claimant sustained a new injury in the nature of a lumbar strain, for which Carrier 2 is liable.

DECISION

Affirmed.

We incorporate by reference the decision issued by the Appeals Panel in Appeal No. 990133, *supra*. As noted in that decision, the claimant had a preexisting herniated disc from a prior work-related injury which occurred on _____. She was certified as having reached maximum medical improvement from that injury on January 13, 1997, with a seven percent impairment rating (IR). The claimant had other jobs since that injury, and was working for Employer 2 in this case when she hurt her back while lifting a tote. As noted in the previous decision, an MRI taken after the 1998 injury showed essentially the same findings as on an MRI taken after the 1996 injury, with the herniation being the same size, as noted by an administrator at the office of Dr. W, who was for a while the claimant's treating doctor. Dr. W was a doctor to whom she had been referred by Carrier 1. A designated doctor assigned a 10% IR for the 1998 injury, and he likewise noted no change in the MRIs. EMG and nerve conduction testing was within normal limits.

As we review the evidence underlying the finding of a new back sprain injury, rather than an aggravation, we cannot agree that this is against the great weight and preponderance of the evidence. Indeed, there is a dearth of evidence indicating that the herniations were worsened or altered by the lifting incident. The hearing officer's determination was soundly based on the evidence in the record, and no further development was necessary or required by remand.

Regarding the remand, the scope of remedy that the Appeals Panel deems appropriate to address reversible error is within the discretion of the Appeals Panel; it is not limited only to the specific relief sought by the appellant. That the remedy ordered by the Appeals Panel (in this case, reversal and remand) yields a result unwelcome to an appellant does not present the basis for appeal. Our original decision described at length the basis for finding that a single decision had to be issued from this single dispute resolution proceeding. We also specifically asked the hearing officer to review the evidence, and to issue findings of fact setting forth what the nature of any 1998 aggravation would be (essential in light of the evidence indicating that the objective herniation injury was essentially unchanged after the 1998 injury). In the course of re-evaluating the evidence on this matter, the hearing officer had the authority to issue a new decision if led to the conclusion that the nature of any contended "aggravation" could not be described or identified.

We do not find reversible error in the hearing officer's separation of findings of fact and conclusions of law under the different docket numbers, because we regard both carriers and the claimant as necessary parties to this decision, given the presence of all in a single proceeding. Accordingly, we have considered these findings and conclusions as those pertinent to the proceeding overall. We note that while Carrier 1 complains that the decision of the hearing officer issued against Carrier 2 became final because "no one"

appealed that decision, Carrier 1 did appeal that decision. Carrier 1's assertion that it is not a party for some purposes, but must be for others, is without merit.

We disagree that the hearing officer's decision is not clear. Carrier 1 is liable for the effects of the 1996 injury, as it was even before the issuance of our prior decision. (While the hearing officer ordered payment of income benefits for that injury, it does not appear that any further income benefits are due under the 1989 Act and therefore need not be paid.) The extent to which liability for further medical treatment for the 1996 injury falls outside the parameters outlined in Section 408.021 must be addressed through the medical review dispute resolution process provided in Section 413.031.

Accordingly, the hearing officer's decision on appeal here is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Elaine M. Chaney
Appeals Judge