

APPEAL NO. 991263

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 May 24, 1999. The issues at the CCH were whether the compensable injury is a producing cause of the respondent's (claimant) lumbar radiculopathy, and whether the appellant (carrier) contested compensability of the claimant's diagnosed lumbar radiculopathy on or before the 60th day after being notified of the injury and, if not, is the carrier's contest based on newly discovered evidence that could not reasonably have been discovered at an earlier date. The hearing officer determined that the Division of Hearings for the Texas Workers' Compensation Commission (Commission) does not have jurisdiction to resolve this dispute, and that jurisdiction is properly in the Division of Medical Review for the Commission. The carrier appeals, urging that the hearing officer did not have the authority to make findings of fact or issue an order because she determined that she did not have jurisdiction over the issue. The claimant replies that he agrees with the hearing officer's findings of fact, and requests that the Appeals Panel order immediate payments to medical treatment facilities and allow treatment as suggested for pain relief.

DECISION

Affirmed, as reformed.

The claimant, a paramedic, testified that on \_\_\_\_\_, his helicopter clipped a wire and crashed, injuring his neck, back, head, and right leg. The claimant was treated at the emergency room (ER) where he received x-rays and was released. Approximately three weeks later, he continued to have cervical, thoracic and lumbar pain. The claimant sought medical treatment at an ER and followed up with a doctor who told him that his spine was fractured from T12-L5.

A medical report from Dr. A dated December 27, 1991, indicates that the claimant was experiencing pain at all times in the lumbar area and had radicular pains into his legs bilaterally. Dr. A recommended an MRI of the claimant's lumbar spine to rule out a herniated disc. On September 18, 1992, Dr. O evaluated the claimant and assigned him a 15% impairment rating. Dr. O stated that in the lumbar area there was loss of signal at L3-4, L4-5 and L5-S1 as found on the MRI. The medical records indicate that the claimant was off work from \_\_\_\_\_, through October 1992.

The claimant testified that in October 1992 he went to work in Country 1 as the head of an ER department for outpatient care at two military bases. The claimant testified that he received intermittent treatment and physical therapy for his back and leg pain at the hospitals where he worked. In 1996, the claimant's job changed and he was assigned to work as security for the royal family in Country 1. The claimant testified that once his job description changed, his pain increased in severity because he had to sit for long periods of time. In October 1997, the claimant had an ESI in Country 2 which provided him with temporary pain relief.

In March 1998, the claimant returned to the United States and received medical treatment from Dr. M in City, Texas, because he did not want to have surgery in Country 1. The claimant testified he was told he had to go to another doctor for an evaluation before he could have the surgery under workers' compensation, but he needed to return to work in Country 1, so he decided to have the surgery and pay for it himself. On March 10, 1998, Dr. M performed a left L5 hemilaminectomy and discectomy with foraminotomy. The claimant testified that he returned to work in Country 1, but continued to suffer from pain down both of his legs, and his left foot began dragging. The claimant testified that he could not adequately perform his job, and he returned to the United States in December 1998 for further treatment.

The evidence shows that the claimant attempted to seek medical treatment in December 1998 through workers' compensation; however, the requested treatment was denied as not being related to the compensable injury. The carrier asserts that the claimant's current low back problems, including radiculopathy, are not related to the compensable injury. The hearing officer noted, and we agree, that the medical records could not more strongly show that the low back symptoms and radiculopathy for which the claimant sought medical treatment in December 1998, are related to the helicopter crash on \_\_\_\_\_. The medical records from December 1991 describe complaints of bilateral radicular pain, and Dr. M and an independent medical examiner indicate that the claimant's current problems are related to the compensable injury. The claimant testified that since the injury, he has suffered from burning pain down both legs.

The hearing officer made the following findings of fact, conclusions of law, and decision and order:

### **FINDINGS OF FACT**

2. As the result of the helicopter crash on \_\_\_\_\_, Claimant sustained multiple injuries including, but not limited to, an injury to his low back which included bi-lateral lower extremity radiculopathy.
3. Claimant received treatment for his lumbar condition, through the Workers' Compensation system, in 1991 and 1992.
4. Carrier had notice of facts showing compensability of the lumbar condition as early as January of 1992, when they received [Dr. A's] December 27, 1991 medical report which identified Claimant, his employer, the date of injury, the nature of the injury and facts relating the lumbar condition (radiculopathy) to the compensable injury.
5. Carrier denied treatment to Claimant for his lumbar spine condition in December of 1998, claiming that the lumbar condition was not related to the compensable injury.

6. Carrier disputed the compensability of the lumbar radiculopathy at a benefit review conference on April 1, 1999.

### **CONCLUSIONS OF LAW**

3. The Division of Hearings for the [Commission] does not have jurisdiction to resolve this dispute.
4. Jurisdiction is properly in the Division of Medical Review for the [Commission].

### **DECISION**

The Division of Hearings for the [Commission] does not have jurisdiction to resolve this dispute. Jurisdiction is properly in the Division of Medical Review for the [Commission].

### **ORDER**

Carrier is ordered to pay medical benefits in accordance with this decision and order, the Texas Workers' Compensation Act, and the Commission's Rules.

The hearing officer, in the decision and order, states:

After having exhaustively reviewed the evidence presented herein, and after reviewing the relevant Appeals Panel decisions, despite the clear evidence that this case should be resolved in favor of the Claimant, it is clear that this case really involves an issue of entitlement to medical benefits and that neither this hearing officer, nor the Appeals Panel have jurisdiction to resolve the dispute. Jurisdiction is properly with the Division of Medical Review.

Under Appeals Panel Decisions 981133 [Texas Workers' Compensation Commission Appeal No. 981133, decided July 15, 1998] and 990076 [Texas Workers' Compensation Commission Appeal No. 990076, decided February 25, 1999, Claimant was entitled to reasonable and necessary lifetime medical treatment for this injury, and any dispute as to the medical treatment should be presented to Medical Review. Therefore, this hearing officer does not have jurisdiction to resolve the issue of whether the compensable injury is a producing cause of Claimant's current lumbar radiculopathy, nor does she have jurisdiction over the accompanying waiver issue.

The Appeals Panel has stated that the issue of whether or not treatment is reasonable and necessary for the claimant's compensable injury in the past or in the future is not within the jurisdiction of the hearing officer. The determination of what

"health care is reasonably required by the nature of the injury" is a matter for the Medical Review Division of the Commission. Section 413.031(a); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 133.305 (Rule 133.305). The determination of "benefit disputes" are adjudicated by the Commission's Hearings Division. Rule 140.1. A "benefit dispute" is one "regarding compensability or eligibility for, or the amount of, income or death benefits." *Id.* A carrier is liable for lifetime medical benefits reasonably required by the nature of a compensable injury. Section 408.021(a); Texas Workers' Compensation Commission Appeal No. 92649, decided January 6, 1993.

Questions of jurisdiction may not only be first raised on appeal, but are always at issue whether raised by the parties or not. Texas Workers' Compensation Commission Appeal No. 971871, decided October 29, 1997. In the present case, we find that the hearing officer did have jurisdiction to determine the identified issues before her. However, she did not have jurisdiction over the issue of what treatment is reasonable and necessary. While it appears obvious that the claimant is suffering from radiculopathy and other conditions related to his compensable injury, the Division of Hearings must determine what conditions are compensable before the Division of Medical Review can determine what treatment is reasonable and necessary. The carrier is refusing to pay for medical benefits for a back injury which it accepted as compensable in 1991, and this is the underlying dispute. While we do not understand the position taken by the carrier, it is within their province to dispute the medical treatment. Although it does not change the ultimate outcome of the case, we reform the hearing officer's Conclusion of Law No. 3 and Decision to read: The Division of Hearings for the Texas Workers' Compensation Commission does have jurisdiction to resolve the issue of whether the compensable injury is a producing cause of the claimant's lumbar radiculopathy, and whether the carrier contested compensability of the claimant's diagnosed lumbar radiculopathy on or before the 60th day after being notified of the injury. We also reform Conclusion of Law No. 4 and Decision to read: Jurisdiction over what health care is reasonably required by the nature of the injury is properly in the Division of Medical Review for the Commission.

The carrier appeals only the hearing officer's findings of fact and order, asserting that the hearing officer had no authority to make the above findings of fact or issue an order once she determined that jurisdiction over the issue did not exist in the Division of Hearings. Because the hearing officer did have jurisdiction over the identified issues before her, she did have authority to make the above findings of fact and order. The hearing officer's findings of fact are sufficiently supported by the evidence. The claimant should present to the Division of Medical Review, any dispute over the denial of medical care.

The decision and order of the hearing officer are affirmed, as reformed.

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Dorian E. Ramirez  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge