

APPEAL NO. 991884

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 July 20, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury to his low back in addition to the injury to his hernia on _____, and whether he had disability from the injury sustained on _____. The hearing officer determined that the claimant did not sustain a compensable injury to his low back in addition to a hernia injury on _____, and that he had disability from _____, through April 8, 1999. The claimant appeals, pointing to evidence that he feels establishes a compensable low back injury and that he had disability up to June 1, 1999. The respondent (carrier) urges that the appeal should be dismissed for lack of jurisdiction and, alternatively, that there is sufficient evidence to support the determinations and decision of the hearing officer.

DECISION

Affirmed in part, reversed and remanded in part.

The carrier asserts that the claimant failed to invoke the jurisdiction of the Appeals Panel because his appeal is prepared and signed by (Attorney) as the representative of the claimant. This is the same person who attended the benefit review conference with the claimant and who signed as claimant's representative at the CCH and presented the claimant's case, with claimant's consent. From correspondence, it appears that Attorney is employed by an entity called the Injured Workers Assistance Center. The record does not show that Attorney is serving as or is licensed as an attorney or that he is being paid by the claimant. From the record before us and our previous decision on this issue, we do not find that the jurisdiction of the Appeals Panel has not been invoked. Texas Workers' Compensation Commission Appeal No. 991547, decided September 2, 1999.

Not in issue was the fact that the claimant sustained a compensable hernia injury from a lifting incident on _____. He underwent hernia repair surgery on January 8, 1999. The claimant stated he first complained about his lower back pain sometime after his surgery and that, because the doctor was not listening to him, he changed doctors to a chiropractor, Dr. G. Dr. G conservatively treated the claimant for complaints of low back and abdominal pain starting on or about January 27, 1999. While the records of Dr. G tend to show a back condition or problem, his records also continue to show abdominal pain related conditions. In any event, the claimant was referred for an MRI which was done on March 25, 1999. The resulting report showed no evidence of spondylolysis, spondylolisthesis, early facet joint degenerative changes or ligamentum flava hypertrophy. The impression of the test was no evidence for disc bulge or herniation and no spinal canal stenosis. The claimant was seen by a designated doctor on April 8, 1999, who reported that the claimant had not reached maximum medical improvement (MMI) and related the claimant's continued problems to the hernia and not to any lumbar injury. Unfortunately, the designated doctor states in his report that he did not review pre- or post-surgery

medical records nor did he review the MRI or report thereof, which calls into question the thoroughness and value of his report. However, from the totality of evidence regarding whether a back injury was sustained on _____, we conclude there was sufficient evidence from the medical reports, MRI results, and other circumstances surrounding the claimed low back injury and reporting thereof for the hearing officer to determine that a back injury had not been proven by the claimant. That Dr. G's reports could support inferences different from those found most reasonable by the hearing officer regarding the claimed back injury does not form a sound basis to reject the fact findings or the decision. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994.

Regarding the claimant's disability, we reverse and remand for further consideration and development of evidence if needed. Clearly, there was some period of disability given the hernia injury and subsequent surgery even though we affirm the determination of no compensable low back injury. In this regard, we do not find any fact findings to support the conclusion that disability ended on the date of April 8, 1999. To the contrary, the only fact finding dealing with an April 8, 1999, date is the finding that on that date the claimant saw the designated doctor who concluded that the claimant had not reach MMI, and that the claimant's pain and numbness in the lower abdomen and upper thigh were related to the hernia injury and not to a lumbar injury. While disability is not necessarily hinged to MMI, a designated doctor's report that MMI has not been reached is not, conversely, evidence that disability has ended. There were other dates in various documents and in the claimant's testimony regarding the ending time for disability, e.g., the surgeon indicated in a report that the release date for return to work unless otherwise noted was February 22, 1999, the claimant testified that he started working another job on June 1, 1999, there was evidence that the claimant was offered a light-duty position at the time of the benefit review conference, there was evidence that the claimant was late or did not follow up on a subsequent medical appointment, and there was a release by Dr. G sometime in June 1999. In any event, there are no factual findings supported by evidence that the disability period related to April 8, 1999, the only event occurring that day being a determination by a designated doctor that the claimant was not at MMI as related to the hernia injury. Thus the conclusion and decision regarding disability are not supported by the findings of fact and result in this remand for further consideration and development of evidence deemed necessary for appropriate factual findings.

That part of the decision stating that the claimant did not sustain a compensable injury to his low back on _____, is affirmed and that part of the decision stating that the claimant had disability from _____, through April 8, 1999, is reversed and remanded. 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.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge