

APPEAL NO. 000298

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 January 18, 2000. With respect to the issues before him, the hearing officer determined that the appellant's (claimant) compensable injury of \_\_\_\_\_, is not a producing cause of her current L4-5 and L5-S1 disc herniations and that the claimant reached maximum medical improvement (MMI) on September 3, 1998, with a 10% impairment rating (IR) in accordance with the report of Dr. T, the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In her appeal, the claimant asserts that the hearing officer's extent-of-injury determination is against the great weight of the evidence and further contends that the hearing officer erred in not giving presumptive weight to Dr. T's amended report, which states that the claimant has not yet reached MMI. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed, as modified.

It is undisputed that on (previous date of injury), the claimant sustained a compensable injury while working for another employer who had workers' compensation coverage with a different carrier. On December 7, 1998, another hearing officer held a hearing to determine whether the claimant sustained a new injury on \_\_\_\_\_, while working for an employer who had workers' compensation coverage with the carrier herein or a continuation of her previous (previous date of injury), compensable injury. The hearing officer issued two decisions and an appeal was taken. In Texas Workers' Compensation Commission Appeal No. 990133, decided March 8, 1999, the Appeals Panel determined that the hearing officer erred in issuing two decisions; thus, it remanded the case for the hearing officer to issue a single decision and order. On remand, the hearing officer issued one decision and order in which she determined that the herniated discs at L4-5 and L5-S1 are a result of the compensable injury sustained on (previous date of injury), and that the claimant sustained a lumbar sprain injury on \_\_\_\_\_. In Texas Workers' Compensation Commission Appeal No. 991222, decided July 26, 1999, the Appeals Panel affirmed the determinations that the claimant sustained a lumbar sprain injury on \_\_\_\_\_, and that the herniated discs at L4-5 and L5-S1 were caused by the (previous date of injury), compensable injury.

The Commission selected Dr. T to serve as the designated doctor. In a Report of Medical Evaluation (TWCC-69) dated October 17, 1998, Dr. T certified that the claimant reached MMI on September 3, 1998, with an IR of 10%. A Commission benefit review officer sent additional records for Dr. T to review and to determine if they changed his opinion as to whether the claimant had reached MMI. In his response, Dr. T opined that the claimant had not yet reached MMI, noting that a January 14, 1999, CT scan showed herniation and that Dr. R records reflect worsening radiculopathy. Dr. T concluded the claimant would reach MMI after surgery and rehabilitation.

As noted above, one of the issues before the hearing officer was whether the claimant's \_\_\_\_\_, compensable injury is a producing cause of her "current L4-5 and L5-S1 disc herniations." That issue has already been finally resolved at the Commission-level against the claimant in Appeal No. 991222, *supra*, where the Appeals Panel affirmed another hearing officer's determination that the \_\_\_\_\_, injury was a lumbar sprain and that the (previous date of injury), compensable injury caused the herniated discs at L4-5 and L5-S1. That decision is *res judicata* on the extent-of-injury issue presented in this case. Thus, the hearing officer was without jurisdiction to relitigate that issue and, accordingly, we strike Finding of Fact No. 4 and Conclusion of Law No. 3.

The claimant also contends that the hearing officer erred in giving presumptive weight to Dr. T's report certifying that the claimant reached MMI on September 3, 1998, with an IR of 10%. We find no merit in this assertion. As noted above, Dr. T's subsequent determination that the claimant has not yet reached MMI is premised upon the fact that the claimant has herniated discs at L4-5 and L5-S1, with worsening radiculopathy and that she needs spinal surgery. That is, the designated doctor withdrew his certification of MMI based upon a worsening of the herniations which are not part of the \_\_\_\_\_, compensable injury. As a result, we cannot agree that the hearing officer erred in determining that the great weight of the other medical evidence is not contrary to Dr. T's October 17, 1998, report or in determining that the claimant reached MMI for the \_\_\_\_\_, injury on September 3, 1998, with a 10% IR in accordance with that report.

As modified, the hearing officer's decision and order are affirmed.

Elaine M. Chaney  
Appeals Judge

CONCUR:

Joe Sebesta  
Appeals Judge

Dorian E. Ramirez  
Appeals Judge