

APPEAL NO. 000921

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 April 3, 2000, in (City 1), with (hearing officer 1). The only issue before hearing officer 1 was is the appellant (claimant) entitled to lifetime income benefits (LIBs). Hearing officer 1 determined that the claimant has lost the use of both feet at or above the ankle; that the cause of the claimant's condition is unknown; that the medical evidence is insufficient to establish that the work-related injury of _____, caused the claimant to lose the use of both feet; and that the claimant is not entitled to LIBs. The claimant appealed, stated that the Appeals Panel had affirmed a decision of a hearing officer that the condition of his legs was caused by the compensable injury, urged that he was not required to again establish that the condition of his feet was related to the compensable injury, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that he is entitled to LIBs. The respondent (carrier) replied; contended that the claimant waived the right to raise collateral estoppel or *res judicata* because he did not raise them at the CCH; argued that the CCH decision rendered on February 8, 1996, did not find that the claimant had lost the use of either foot at or above the ankle and did not address the question of whether future loss of such use would be causally related to the compensable injury; stated that something other than the compensable injury caused the loss of the use of both feet; urged that the evidence is sufficient to support the decision of the hearing officer; and requested that it be affirmed.

DECISION

We reverse and remand.

We first address the carrier's contention that collateral estoppel and *res judicata* were not raised at the CCH and could not be considered on appeal because they had been waived. The term estoppel was used at the CCH and the claimant contended that certain issues had been resolved at a previous CCH and should not again be considered. Hearing officer 1 obtained and admitted as hearing officer exhibits a copy of a Decision and Order rendered by another hearing officer (hearing officer 2) on February 8, 1996, and a copy of Texas Workers' Compensation Commission Appeal No. 960423, decided April 8, 1996, affirming findings of fact, a conclusion of law, the decision, and the order contained in that Decision and Order. The claimant did not waive the right to raise the questions of *res judicata* or collateral estoppel on appeal.

The Decision and Order of hearing officer 1 contains about a four-page statement of the evidence that includes quotations from medical records and indicates that he referred to a medical dictionary. Briefly, the claimant was a long-haul truck driver, sustained a cut on his right leg in the course and scope of his employment in November 1994, was found unconscious in a truck in another state several days later, was taken to a hospital, and later transferred to another hospital in that state. A report of an MRI of the brain performed on December 21, 1994, revealed mild age-related ischemic gliosis and

otherwise unremarkable MRI with no evidence of intercranial hemorrhage, mass, or shift. The claimant was transferred by air ambulance to a hospital in City 1 on December 23, 1994. A report dated that day indicates that he was awake and alert, but not fully oriented; that he will receive cognitive and speech therapy; and a goal is to increase his ability to wheel himself in a wheelchair and to ultimately ambulate. In a consultation report dated December 29, 1994, Dr. H stated that initial evaluation in the other state revealed encephalopathy of unknown etiology. A narrative of an impairment rating (IR) by Dr. S, who was then the claimant's treating doctor, gave a history of the claimant's medical records; reported that the clinical diagnosis was status post anoxic insult to the brain of unknown etiology, possible encephalopathy, and left lower extremity cellulitis with resultant sepsis; and assigned a 49% IR consisting of 20% for brain disorders, 25% for lower extremities with notation of "can stand but walks only on level," and 10% for upper extremities.

Hearing officer 2, in the 1996 decision, made the following findings of fact and conclusion of law:

FINDINGS OF FACT

7. Claimant was admitted to the hospital and diagnosed with sepsis, decreased mental status, left lower extremity cellulitis, Rhabdomyolysis with acute renal failure, urinary tract infection, left lower lobe infiltrate. His leg did have open draining wound.
8. Claimant was treated for about a month; upon discharge he was diagnosed with decreased mental status and urinary tract infection.
9. Claimant had been unable to speak coherently since being found in the deteriorating condition. He has to use a wheelchair to get around.
10. Some treating doctors are confounded by the origin of his condition.
11. [Dr. S] supports Claimant's claim that the cut to his leg is causally connected to his current condition; therefore, Claimant's current condition is causally connected to the original cut to his leg on _____.

CONCLUSION OF LAW

3. Claimant sustained a compensable injury on _____ which then manifest [sic] a myriad of symptoms by November 29th. Claimant's injuries include sepsis, decreased mental status, left lower extremity cellulitis, Rhabdomyolysis with acute renal failure, urinary tract infection, left lower lobe infiltrate.

The Appeals Panel, in Appeal No. 960423, *supra*, affirmed those findings of fact and the conclusion of law.

In the Statement of the Evidence in his Decision and Order, hearing officer 1 wrote:

Various comments contained in the medical records exhibit uncertainty concerning the cause of the Claimant's condition:

This 61 year old gentleman has sustained some type of primary event last month, which has defied diagnosis at the previous institution. (See Carrier's Ex. 5)

Based on the hospital records it appears that the exact cause of his incident was never quite determined. . . . (See Claimant's Ex. 4)

. . . the underlying causes of the patient's impairments are still somewhat unclear. . . . (see Claimant's Ex. 3)

"Post Anoxic insult to the brain of unknown etiology;" . . . (See Claimant's Ex. 4)

He pulled into a truck stop, and then there is no further knowledge from there of exactly what happened. (See Carrier's Ex. 5)

. . . according to the wife, they never found a satisfactory explanation for his condition. (Ex. Carrier's Ex. 5)

(Bold in the original.)

The evidence presented by the Claimant is insufficient to establish a causal connection between the original compensable injury and the subsequent loss of use of both feet at or above the ankle. The causal connection was not based on reasonable medical probability. . . .

Hearing officer 1 made the following findings of fact and conclusions of law:

FINDINGS OF FACT

2. The Claimant is suffering from one or more conditions which have left him severely impaired.
3. The Claimant has lost the use of both feet, at or above the ankle.
4. The Claimant's condition is permanent.

5. The cause of the Claimant's condition is unknown.
6. The medical evidence is insufficient to establish that the work related injury on _____, caused the Claimant to lose the use of both feet.
7. The medical evidence of causation is based on speculation and conjecture.
8. The required causal connection, between the Claimant's original injury and the subsequent loss of use of both feet, was not based on reasonable medical probability.

CONCLUSION OF LAW

1. The Claimant is not entitled to [LIBs] for the loss of use of both feet.

In her Decision and Order dated February 8, 1996, hearing officer 2 made some findings of fact related to the claimant's condition, a finding of fact that the claimant's current condition was causally connected to the original cut to his leg, and a conclusion of law that the claimant sustained a compensable injury that included conditions she listed. The decision of hearing officer 2 was affirmed by the Appeals Panel in Appeal No. 960423, *supra*. In his Decision and Order, hearing officer 1 states that various comments contained in the medical records exhibit uncertainty concerning the cause of the claimant's condition. Hearing officer 2 had made a finding of fact that some treating doctors were confounded by the origin of the claimant's condition, but made additional findings of fact and a conclusion of law set forth earlier in this decision. Hearing officer 1 did not accept the findings of fact and conclusion of law made by hearing officer 2 and did not make specific findings of fact concerning what caused the claimant's loss of use of both feet at or below the ankle and whether those causes are part of the compensable injury. Without authority, hearing officer 1 rejected findings of fact and the conclusion of law in the Decision and Order of hearing officer 2 and made a finding of fact that the medical evidence is insufficient to establish that the work-related injury on _____, caused the claimant to lose the use of both feet.

We reverse the decision of the hearing officer and remand for him to accept the findings of fact and conclusion of law in hearing officer 2's decision dated February 8, 1996, and to make findings of fact and a conclusion of law to resolve the dispute issue of whether the claimant is entitled to LIBs. 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.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge