

## APPEAL NO. 001239

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 3, 2000. The hearing officer determined that the appellant (claimant) sustained a compensable lower back strain injury on \_\_\_\_\_, and that the claimant had disability beginning on January 10, 2000, and ending on April 3, 2000. The claimant appealed, contending that the compensable injury was much more serious than a strain and that it should have included cervical and thoracic injuries as well. The appeals file does not contain a response from the respondent (self-insured). The finding of disability has not been appealed and has become final. Section 410.169.

### DECISION

Affirmed.

An MRI of the lumbar spine was interpreted as showing arthrosis, disk protrusion and bulging, and degenerative disk disease at various levels. In his appeal, the claimant asserts that the compensable lumbar injury was "much more serious than a mere strain." She asks that a new finding be rendered reflecting this greater severity.

We note that no medical evidence was produced on the question of whether a "strain" and the diagnoses contained in the MRI are mutually exclusive or whether "strain" can be fairly read to encompass these other diagnoses. In any case, we construe this point on appeal to be in reality a question of entitlement "to all health care reasonably required by the nature of the injury as and when needed." Section 408.021. As such, any future dispute over medical care for the lumbar injury should be addressed to the Division of Medical Review.

The claimant also argues on appeal that the hearing officer's limitation of the compensable injury to the lumbar spine was against the great weight and preponderance of the evidence. She contends that the compensable injury included a cervical and lumbar injury. The evidence at the hearing regarding a cervical and thoracic injury primarily included the statement on the claimant's Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) that these areas were injured; and a statement of Dr. B<sup>1</sup>, that the claimant also suffered "strain of the cervical and thoracic spine." At the CCH, the claimant's attorney represented both in opening and closing statements that the issue was whether a lumbar injury was compensable. The claimant on direct examination only testified to a low back injury with pain radiating into her legs. On cross-examination, she was asked about her statement in the TWCC-41 and replied essentially that she did not know how all these other body parts "became involved."<sup>2</sup>

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<sup>1</sup>Only pages 2 and 3 of the statement are in evidence. There is no indication of when this statement was made, but the self-insured received it on April 21, 2000.

<sup>2</sup>She also said that she initially felt some thoracic, neck and arm pain but this all resolved.

Clearly extent of injury was not listed as a disputed issue. From the claimant's request in her appeal that we "remand the case for further development of the evidence regarding the extent of injury" (emphasis added) we could plausibly infer that the claimant does not think extent of injury was actually litigated. Unfortunately, for whatever reason, the self-insured declined to respond to the appeal and shed light on this question of whether extent of injury was actually litigated or whether there was merit in this point on appeal. See Texas Workers' Compensation Commission Appeal No. 990164, decided March 15, 1999, and Texas Workers' Compensation Commission Appeal No. 962338, decided January 2, 1997. Given the state of the record, we are unwilling to conclude that extent of injury was an issue or was actually litigated at the CCH, and we decline to afford the relief requested by the claimant. In so doing, we stress that we do not construe Finding of Fact No. 4 and Conclusion of Law No. 3 as forever foreclosing the possibility of raising an extent-of-injury issue in this case or as "setting in stone" that the sole compensable injury was a lumbar spine injury.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge