APPEAL NO. 002060

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 August 4, 2000. The hearing officer determined that: (1) the appellant (claimant) had disability from May 14, 1999, through June 15, 1999; (2) claimant's herniated disk/protrusion is not a result of the _____, injury; and (3) the benefit review conference (BRC) agreement of July 8, 1999, limits the agreed-to injury to a back strain only. Claimant appealed these determinations on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm in part and reverse and render in part.

Claimant contends the hearing officer erred in determining that the July 8, 1999, agreement limited the injury to a low back strain, only. The agreement stated as follows:

> C06 Did the claimant sustain a compensable injury on _____?
>
> Parties agree that the claimant did sustain a compensable low back strain on _____. Claimant also agrees to see a doctor of the carrier's choice . . . .

The agreement did not state that extent or scope of the injury was an issue. After considering the wording of the agreement, we conclude that the hearing officer's determination that the parties agreed that the injury was limited to a back strain only is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We reverse that determination and render a decision that the agreement of July 8, 1999, did not limit the injury to a low back strain.

Claimant contends the hearing officer erred in determining that her "HNP[herniated nucleus pulposus]/protrusion is not a result of the _____, injury." It is undisputed that claimant sustained a low back sprain at work on _____. Medical records indicate that claimant sustained a back injury when she twisted or turned at work. Whether claimant's injury extended to an "HNP/protrusion" was ultimately a question of fact for the hearing officer. *See* Texas Workers' Compensation Commission Appeal No. 92617, decided January 14, 1993. The hearing officer reviewed the evidence and determined that claimant's injury was a lumbar strain only and that the HNP/protrusion was not the result of the _____, injury. After reviewing the record we conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

Claimant contends the hearing officer erred in ending her disability period on June 15, 1999. Claimant asserts that her treating doctor has not ever released her to full-duty work. The hearing officer stated that claimant had some period of disability and that her normal working abilities were impaired "for at least the maximum 6-week period as opined" by Dr. S. In July 2000, Dr. S stated that he would have allowed "4 - 6 weeks post injury for time off" due to the compensable injury. Six weeks after claimant's injury was June 14, 1999. The hearing officer judged the credibility of the evidence and decided what facts were established. The hearing officer's disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

We reverse that part of the decision and order that determined that the BRC agreement of July 8, 1999, limited the agreed-to injury to a back strain only, and render a determination that the BRC agreement did not limit the scope or extent of the compensable injury. We affirm that part of the hearing officer's decision that determined that claimant had disability from May 14, 1999, through June 15, 1999. We affirm that part of the hearing officer's decision that determined that claimant's HNP/protrusion is not a result of the _____, injury.

Judy L. Stephens
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Gary L. Kilgore
Appeals Judge