

APPEAL NOS. 002141 AND 002445

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 August 22, 2000. This case has two docket numbers and involves two events pertaining to the same respondent (claimant) while employed by two different employers, both of which were insured by the same insurance company. To facilitate in the understanding and redaction, we provide the following background. The claimant sustained a compensable low back injury on _____ (the 1996 injury), while employed by (Employer I) which had workers' compensation coverage with (Carrier I). The claimant subsequently was employed by (Employer II), which was also insured by (Carrier II). Because the claims involve separate employers and separate policies, for our purposes it is as if there were two different carriers. The issues at this hearing were:

In Docket No. _____

1. Is the compensable injury of _____ a producing cause of the Claimant's recurrent left paracentral and lateral disc herniation at the L5-S1 level after April 4, 2000?

In Docket No. _____

1. Did the Claimant sustain a [new] compensable injury on _____?
2. Did the Claimant have disability resulting from the claimed injury of _____, and if so, for what period(s)?

With regard to those issues, the hearing officer found that the compensable 1996 injury was a producing cause of the claimant's recurrent left paracentral and lateral disc herniations at the L5-S1 level; that the claimant did not sustain a (new) compensable injury on _____; and that the claimant did not have disability due to the _____, claim.

Carrier I appeals, contending that the claimant had completely recovered from the 1996 injury; that the 1996 injury was to the right side of the L5-S1 level, while the "2000 injury involved the left side of [claimant's] back"; and that the medical evidence supports Carrier I's position. Carrier I requests that we reverse the hearing officer's decision on the issue in Docket No. _____ and render a decision in its favor. Carrier II responds, urging that we affirm the hearing officer's decision on that issue, and points out that the hearing officer's decision regarding the issues of a new compensable injury in April 2000 and disability have not been appealed and, therefore, should become final pursuant to Section 410.169. The appeal file does not contain either an appeal or a response from the claimant.

We agree that the hearing officer's decision that the claimant did not sustain a new compensable injury on April 4, 2000, and did not have disability from that alleged injury has not been appealed and has become final under Section 410.169. Our review, consequently, will be limited to the issue in Docket No. _____, the 1996 injury.

DECISION

Affirmed.

As previously indicated, it is undisputed that the claimant sustained a low back injury on _____; that the claimant had spinal surgery in the form of a right laminectomy and discectomy at L5-S1 on May 28, 1996; and that he returned to work on July 3, 1996. The claimant's treating doctor and surgeon was Dr. C. Between July 1996 and March 2000, when the claimant went to work for Employer II, the claimant worked at several different jobs. Most of the CCH concerned the mechanics of what the claimant was doing on _____, and whether that caused a new compensable injury. That issue not having been appealed, will not be addressed further.

The claimant testified that his 1996 injury had completely resolved and that he had returned to work without any problems. That testimony is somewhat called into question in that the claimant obviously had problems in 1998 and again consulted Dr. C. In a report dated May 22, 1998, Dr. C references the 1996 injury and writes:

[Claimant] has had residual deficit and however more recently has had recurrent exacerbation of back and leg symptoms

The patient currently complains of stabbing, burning, pins and needles sensation at the lumbo sacral junction with radiation down posterior aspect of both legs and the anterior aspect of the right thigh and to the knee. Pain level is rated at 9½ out of possible 10. Sitting, walking, lying on the stomach aggravates the symptoms. Lying flat on the floor gives some relief

* * * *

IMAGING STUDIES: I reviewed his MRI, particularly one from March 14, 1997. These show postoperative changes at L5/S1 and the right side epidural fibrosis. There is a small disc protrusion at this level.

IMPRESSION: This is a 28-year-old man with chronic low back pain. He previously had lumbar laminectomy for L5, S1 herniated disc and he has exacerbation of his back and leg pain. He has mild neurological deficit and is not clear whether this is residual or a new problem.

Dr. C ordered a "myelogram with post myelogram CT . . . to rule out nerve compression" The myelogram was performed on June 8, 1998, and was interpreted as being

normal except for postoperative changes. In a report dated December 14, 1999, Dr. C notes continuing problems, that the “etiology of [claimant's] pain was unclear” and that the claimant “has been under the care of the [clinic] with [Dr. B].” The claimant was released “to resume any activity that he can tolerate.”

After the event of April 4, 2000, the claimant was initially sent to Dr. E and was then referred back to Dr. C. The claimant testified that Dr. E referred him back to Dr. C because Dr. E thought the claimant had “reinjured my old injury.” Dr. C, in a report dated April 28, 2000, wrote:

The patient was treated conservatively and was last seen here on June 11, 1998. A myelogram, post/myelogram CT showed no evidence of nerve root compression. The etiology of his pain was unclear, and surgical intervention was not indicated. He continued to be treated by pain management. After a long absence, he returned with the complaint of back pain after an injury at work while he was attempting to lift a 500 lb. object. He was seen at the [medical clinic] by [Dr. E] and was diagnosed with an exacerbation of his old injury.

Dr. C ordered additional diagnostic studies. A lumbar spine MRI performed on May 9, 2000, had an impression of “recurrent left paracentral and lateral disc herniation which contacts the thecal sac and left S1 nerve root and results in moderate left neural foramina stenosis.” In a report dated May 16, 2000, Dr. C wrote that the claimant is complaining “of left gluteal pain which has become much worse since the last time I saw him,” and that the “main pain is near the surgical site.” In that report, Dr. C comments that he thinks “this should be considered a new injury.”

Rather clearly, the claimant's 1996 injury had not completely resolved, as he testified, and the claimant has continued to seek and obtain medical care from Dr. C, apparently as part of the 1996 injury. While another fact finder could have reached a different conclusion, that does not provide a basis for us to reverse the hearing officer's decision.

We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the evidence for that of the hearing officer.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge