

APPEAL NO. 002976

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 November 28, 2000. The hearing officer determined that the appellant (claimant) "sustained a compensable injury on _____, in the form of a lumbosacral strain," and that the claimant had disability, as a result of his compensable injury, from April 12, 2000, to September 8, 2000. In his appeal the claimant contends that the hearing officer erred in limiting his injury to a lumbosacral strain, asking that we reverse and render a new decision that the claimant's injury includes "disc dessication" and a "broad-based diffuse posterior disc bulge at L5-S1." In addition, the claimant asserts error in the hearing officer's beginning and ending dates of disability. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance.

DECISION

Reversed and rendered in part and affirmed, as modified, in part.

The claimant initially contends that the hearing officer erred in determining that he sustained a compensable injury on _____, "in the form of a lumbosacral strain." The claimant argues that the hearing officer should have found that the claimant's compensable injury included disc dessication and a disc bulge at L5-S1 revealed by a lumbar MRI. While we agree that the hearing officer erred, we cannot agree that he should have more broadly defined the injury as the claimant suggests. Rather, he erred in defining the nature and extent of the injury in the absence of an extent-of-injury issue before him. There was no express extent-of-injury issue reported out of the benefit review conference and our review of the record does not reveal that an extent issue was tried by consent of the parties. Accordingly, we strike the language in the hearing officer's decision that defines the nature and extent of the injury. Specifically, Finding of Fact No. 4, Conclusion of Law No. 3, and the first sentence of the Decision section, will be amended, as follows:

FINDINGS OF FACT

4. The claimant sustained an injury in the course and scope of his employment on _____.

CONCLUSIONS OF LAW

3. The claimant sustained a compensable injury on _____.

DECISION

The claimant sustained a compensable injury on _____.

If an extent-of-injury issue remains between the parties, they may pursue it in the Texas Workers' Compensation Commission's dispute resolution process.

Turning to the disability issue, the hearing officer determined that the claimant had disability, as a result of his compensable injury, from April 12, 2000, to September 8, 2000. The claimant argues that the hearing officer erred in finding both the beginning date and ending date of disability. He argues that the great weight of the evidence demonstrates that the claimant's first day of disability was April 11, 2000. We find no merit in this assertion. At the hearing, the claimant's attorney argued for a starting date of disability of April 12, 2000, and nothing in our review of the record demonstrates that the beginning date of disability is so against the great weight of the evidence as to compel its reversal on appeal. We are more concerned about the September 8, 2000, ending date of disability found by the hearing officer. September 8, 2000, is the date that a carrier required medical examination doctor certified that the claimant reached maximum medical improvement (MMI). We have often noted that disability does not end at the date of MMI; instead, the claimant's entitlement to temporary income benefits (TIBs) ends in accordance with Sections 408.101 and 408.102. Although we appreciate that the parties' interest in disability is closely tied to the issue of TIBs eligibility, the better practice is to resolve the disability issue on the merits without reference to whether the claimant will actually receive or the carrier will have to pay TIBs. In this case, the record does not reflect a change in the claimant's condition from September 8, 2000, to the date of the hearing, November 28, 2000. Indeed, in his discussion, the hearing officer makes it clear that he ended disability on September 8, 2000, because of the MMI certification by stating "there was no medical evidence to dispute the certification of [MMI], which would end the Claimant's entitlement to [TIBs]." Accordingly, we reverse the hearing officer's disability determination and render a new decision that the claimant had disability, as a result of his compensable injury, from April 12, 2000, through the date of the hearing, November 28, 2000. Of course, the question of whether the claimant is entitled to TIBs for that period is dependent upon the resolution of an MMI issue.

The hearing officer's injury determination is affirmed, as modified in this decision. The disability determination is reversed and a new decision rendered that the claimant had disability from April 12 to the date of the hearing, November 28, 2000.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge