

APPEAL NO. 010349

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 January 25, 2001. The issue at the CCH was whether the respondent (claimant) was injured while in the course and scope of employment on _____. The hearing officer determined that "On _____, the Claimant sustained an injury in the form of a disc bulge at L4-5 which is causing lower extremity radiculopathy and a sacral iliac sprain" (Finding of Fact No. 2). The appellant (self-insured) has appealed this determination. The claimant has not filed a response to the appeal.

DECISION

Affirmed as reformed.

There was conflicting evidence presented at the CCH on the issue. The hearing officer's determination on the issue was not 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 (Tex. 1986).

The self-insured disputes Finding of Fact No. 2 on the basis that the hearing officer determined an issue that was not before the parties, namely, extent of injury. We note that extent of injury was not an issue at the benefit review conference (BRC) held on December 4, 2000. When responding to the BRC report, the self-insured did request that an additional issue of extent of injury be added. (Exhibit A to the self-insured's appeal.) That request was denied by the hearing officer on January 4, 2001. (Exhibit B to the self-insured's appeal.) This matter was not discussed at all at the CCH. The 1989 Act, Section 410.151(b), provides that "an issue that was not raised at a [BRC] . . . may not be considered [at a CCH]" with some exceptions not relevant to this case. We have previously held that we "encouraged hearing officers to indicate the nature of the injury when determining whether an injury existed." Texas Workers' Compensation Commission Appeal No. 002898, decided January 29, 2001. However, we have also stated that it is not appropriate for a hearing officer to make a final determination on the issue of extent of injury when the issue of extent of injury is not before the hearing officer and is not necessary to resolve the other issues before the hearing officer. See Texas Workers' Compensation Commission Appeal No. 010322, decided March 22, 2001, also citing Texas Workers' Compensation Commission Appeal No. 001239, decided July 13, 2000. We will, as we did in Appeal No. 002898, *supra*, consider the findings of the hearing officer concerning the extent of the claimant's injury to be beyond the scope of the issue before her and we consider them surplusage. We reform her decision to reflect that the claimant sustained a compensable injury on _____, to her low back, but strike all language in her decision which purports to further define the extent of injury.

The decision and order of the hearing officer are affirmed as reformed.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge