

APPEAL NO. 010587

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 March 1, 2001. The hearing officer found that the respondent (claimant) injured his lumbar spine and had a left wrist contusion on _____, and had disability for the period from June 17, 2000, through the date of the CCH. The hearing officer also found that the medical documents in evidence were insufficient to determine the "extent" of the claimant's injury. The appellant (carrier) appeals and argues that there is no evidence to tie the herniated lumbar disc with any occurrence on _____, and that in fact, the claimant had degenerative disc disease. The carrier also seeks a review of the disability determination. The claimant responds that the decision of an injury and disability is supported by the record.

DECISION

Reversed and remanded.

The claimant contended that he hurt his wrist and back while he was unloading a heavy carton from his delivery truck at a customer's location. He said that as the heavy box fell, he was twisted toward the ground and felt immediate pain through his hip. He said that when he began driving again, his foot was numb. The claimant nevertheless worked the rest of the day, believing that his pain would resolve. The claimant said that he was in greater pain that night (a Friday) and the next day, but could not call his employer until Sunday afternoon. The claimant was examined by Dr. F on June 19, and was taken off work pending evaluation of a possible lumbar herniation. On June 28, Dr. F diagnosed lumbar disc displacement.

An MRI taken July 6, 2000, showed a right-sided extruded disc fragment at L5-S1 displacing the right nerve root, and a shallow protrusion at L4-5. The claimant began treating with Dr. D, who, on July 13, 2000, diagnosed right L5 radiculopathy secondary to lumbar disc degeneration and spondylosis with right L4 herniation. This was treated conservatively, although it apparently culminated in a recommendation for spinal surgery. A concurrence on a recommendation for spinal surgery was dated August 25, 2000 (neither the recommendation nor other second opinion is in evidence).

On August 3, 2000, Dr. S, who reviewed the claimant's medical records for the carrier, recommended a second orthopedic opinion and suggested that the mechanism of injury was not consistent with a lumbar herniation. On August 13, 2000, Dr. SU reviewed the MRI and concluded that most of the findings were chronic and degenerative but that the MRI did not indicate the extent to which any of the conditions might be acute. Thereafter, on August 15, 2000, the carrier disputed the claimant's injury based upon "newly discovered evidence" showing that the claimant had degenerative disc disease that was an ordinary disease of life.

The claimant contended that he was unable to work due to pain in his back. The claimant denied that he had any back problems prior to _____. He agreed that he had a preexisting ganglion cyst on his left wrist. Although the claimant testified that he was scheduled for back surgery within a couple of weeks of the CCH, the parties were obviously still at loggerheads over both the existence and scope of any injury alleged to have occurred on _____. However, when the attorney for the carrier sought clarification of the issue at the beginning of the CCH, suggesting that a finding be made on what the injury was (if the hearing officer agreed that an injury occurred), the attorney for the claimant responded that only "body parts," not diagnoses, were in issue. The carrier pointed out that there were four "options" on the injury issue in this case--no injury, a strain sprain, a herniated disc, or a preexisting condition. The hearing officer agreed with the claimant, however, and said that the "body part really is the best thing," and that "diagnosis" could be litigated through the medical dispute resolution process. Notwithstanding the claimant's arguments that "body parts" only were the issue, it became clear during the claimant's opening statement, presentation of the evidence, and closing argument that the injury he contended occurred on _____ was a herniated lumbar disc and its sequelae.

We cannot agree that the issue here was merely a "body part" or that the medical dispute resolution process is the forum for the threshold question of whether the claimant had a definable "injury," i.e., damage or harm to the body. The purpose of the CCH was to resolve the dispute over occurrence of an injury, not perpetuate it. We cannot agree that the scope and nature of the contended back injury that occurred on _____, was not in issue; plainly, the precipitating factor of this dispute (since the carrier had initially been paying income benefits pending investigation) was receipt by the carrier of its peer review doctors' conclusions that a lumbar herniation could not have occurred given the described mechanism of injury and that the herniation was more likely part of a preexisting degenerative condition.

Consequently, a resolution of this matter was squarely before the hearing officer. Had the hearing officer found only that a "lumbar spine injury" had occurred, there would be support in the record for an inference that this included the herniated disc, which was the primary injury asserted by the claimant. Instead, the hearing officer has created ambiguity and confusion by also finding that "the medical documents in evidence are insufficient to determine the extent of claimant's lower back injury." This finding indicates that the hearing officer believes the injury to be something less than the argued herniation, or that the claimant has in some respect failed to meet his burden of proof, or that the carrier has in some measure proved that aspects of the MRI findings were preexisting. The decision and order, as written, merely perpetuates the continuing dispute of the parties and has left them in limbo with regard to coverage of the upcoming surgery and further medical and income benefits. We agree that this was error, and we remand the case for a determination on the nature of the lumbar spine injury for which the hearing officer believes the claimant carried his burden of proof.

Disability is likewise a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The claimant bears the burden of establishing that a compensable injury was a producing cause of his disability. The claimant tied several months of disability to the herniated lumbar disc. With no clear understanding of what the hearing officer believed the lumbar injury was, we are unable to evaluate the support for the period of disability found by the hearing officer. Any findings on disability on remand should conform to the scope of injury found by the hearing officer.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge