

APPEAL NO. 011222
FILED JULY 18, 2001

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 May 10, 2001. With respect to the sole issue before him, the hearing officer determined that the _____, compensable lumbar injury of the appellant (claimant) did not include an injury to the thoracic spine. Claimant appeals on sufficiency grounds and seeks reversal. Claimant also complains that the hearing officer excluded testimony from Dr. B and that he was not permitted to present his case. Respondent (carrier) responds and urges affirmance of the hearing officer's determination that claimant's injury does not extend to his thoracic spine. However, carrier also appeals the hearing officer's determination that the claimant has had pain in his thoracic spine since his injury and that the thoracic pain is a result of the lumbar spine injury. Carrier's pleading, while timely as a response, was not timely filed to be considered an appeal; therefore, we do not consider it.

DECISION

We affirm.

Claimant contends the hearing officer erred in excluding the testimony of his treating doctor, Dr. B. The hearing officer excluded this testimony because claimant did not give carrier notice that Dr. B would be a witness. Parties must exchange with one another "the identity and location of any witness known to have knowledge of relevant facts" not later than 15 days after the benefit review conference and, thereafter, "as it becomes available." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). Considering this rule, the fact that claimant did not list the witness's name, and the lack of evidence of good cause, we conclude that the hearing officer did not err in excluding the testimony from Dr. B. See Texas Workers' Compensation Commission Appeal No. 94454, decided June 1, 1994.

Claimant contends that he needed an attorney and that he was not able to present his case at the hearing. At the hearing, claimant testified and evidence was presented on his behalf. Claimant also stated that he was satisfied with the ombudsman's assistance and that he was ready to go forward with his case. The record does not reflect that claimant was prevented from presenting his case.

We have reviewed the determination regarding extent of injury and conclude that the issue involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are 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, 176 (Tex. 1986). We do note that there was evidence that the thoracic pain was referred pain from the compensable lumbar injury. We further note that claimant is entitled to health care that relieves the effects naturally resulting from the compensable injury. See Section 408.021(a)(1) of the 1989 Act.

We affirm the hearing officer's decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge