

APPEAL NO. 012053  
FILED SEPTEMBER 6, 2001

This appeal after remand 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 December 12, 2000; February 27, 2001; and April 19, 2001. The hearing officer determined in case number 03 that respondent (claimant) sustained a compensable aggravation injury on \_\_\_\_\_, and that he had disability from January 13, 2000, through April 19, 2001. In case number 02, the hearing officer determined that claimant's \_\_\_\_\_, compensable low back injury is not a producing cause of his L3-4 disc bulging and spondylitic spurring, L4-5 disc protrusion/herniation, or L5-S1 disc bulging. Appellant carrier B appealed this determination on sufficiency grounds. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order. The file did not contain a response from carrier A. The Appeals Panel reversed the hearing officer's decision and order and remanded for further explanation and findings regarding the hearing officer's producing cause determination. Texas Workers' Compensation Commission Appeal No. 011027, decided June 20, 2001. The hearing officer did not hold a hearing on remand. In a decision and order on remand, the hearing officer made essentially the same findings of fact and conclusions of law. Carrier B again appealed the determinations regarding producing cause, new aggravation injury, and disability on sufficiency grounds. The file does not contain a response from carrier A. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm in part and reverse and render in part.

Case number 02 concerns the 1998 injury and the issue was whether claimant's \_\_\_\_\_, compensable low back injury is a producing cause of his L3-4 disc bulging and spondylitic spurring, L4-5 disc protrusion/herniation, or L5-S1 disc bulging. The hearing officer determined that it was not. Claimant, a plumber, testified that he injured his back on \_\_\_\_\_, when he stepped out of a van and felt a pop in his back. Claimant said he was off work for five to six weeks after that injury and then returned to full duty without restrictions. Claimant testified that he did not seek any medical attention for his back after he returned to work. The September 24, 1998, MRI report performed about one month after the August 28, 1998, injury, indicates that claimant had L3-4 disc bulging and spondylitic spurring, L4-5 disc protrusion/herniation, and L5-S1 disc bulging. The 14% impairment rating that apparently was certified in January 1999 for the 1998 injury included impairment for specific disorders, and his treating doctor, Dr. M, noted the results of the September 1998 MRI. There was evidence that claimant had other back injuries prior to 1998. Carrier A was the carrier on August 28, 1998. Carrier B became the workers' compensation insurance carrier in 1999.

Carrier B contends the hearing officer erred in determining that claimant's August 28, 1998, compensable low back injury is not a producing cause of his L3-4 disc bulging and spondylitic spurring, L4-5 disc protrusion/herniation, or L5-S1 disc bulging. The hearing officer explained his determination in Finding of Fact No. 8 as follows:

8. Claimant's August 1998 injury does not contribute to Claimant's L3-4 disc bulging and spondylitic spurring, L4-5 disc protrusion/herniation, or L5-S1 disc bulging as evidenced by the statements of [Dr. W] in his September 18, 2000 letter that "Clinically the patient's symptoms had cleared up after his previous injury of 1998."

In that report, Dr. W also said that there is very little change between the 1998 and 2000 MRI reports. In a February 25, 2000, report, Dr. L stated that claimant had subluxation of the axis with multi-spinal segment misalignment throughout the entire spine, "complicated by degenerative joint disease at the L5/S1 and L4-5 segments of the low back. These degenerative processes were more probably resultant from constant minor trauma occurring during the course of several years due to the type of work being performed by the patient." The 1998 MRI stated that claimant had a "6 MM broad based posterior disc protrusion/herniation at L4-5"; "mild annular disc bulging and spondylitic spurring at L3-4"; and "mild annular disc bulging and spondylitic spurring at L5-S1 with a small broad based posterior disc protrusion." Claimant already had these conditions shown by the MRI findings in 1998, and the hearing officer did not explain what evidence showed that these conditions had resolved and completely disappeared by January 2000, such that the 1998 injury would not be considered at least a producing cause of these conditions. The hearing officer appeared to state that the reason why the 1998 injury is not a producing cause of these conditions is because Dr. W said claimant's symptoms had cleared up. However, the fact that the 2000 MRI findings were almost exactly the same indicates that the conditions shown on the 1998 MRI did not disappear and then reappear in the same form in January 2000. Dr. W did not state that the conditions shown by the 1998 MRI had completely disappeared. The evidence from Dr. L indicated that some of the conditions shown by the MRI had appeared over a period of time. Further, the hearing officer indicated that claimant sustained an aggravation injury in \_\_\_\_\_. If there is an aggravation injury, it is difficult to conceive of what could have been aggravated other than the conditions shown on the 1998 MRI. We have reviewed the evidence and we conclude that the hearing officer's determination regarding producing cause is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we reverse it.

The issues in case number 03 were whether claimant sustained a compensable aggravation injury on \_\_\_\_\_, and whether he had disability. Claimant testified that he sustained a compensable injury on \_\_\_\_\_, when he jumped off a trailer and felt a pop in his back. Claimant said he saw Dr. L the next day and later changed to Dr. W as his treating doctor for that injury. Claimant said he has not worked since the \_\_\_\_\_ injury. Claimant testified that after the 1998 injury, he had pain in his back and right shin.

Claimant said that after the \_\_\_\_\_ injury, the pain went down his left side, through his buttocks and into his leg. He also said he has numbness in the toes of his left foot.

Carrier B contends the hearing officer erred in determining that claimant sustained a new compensable low back injury on \_\_\_\_\_, and that claimant had disability from January 13, 2000, through April 19, 2001. We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. Despite the fact that the MRI findings were essentially the same in 1998 and 2000, this does not mean that claimant could not have sustained a new injury in \_\_\_\_\_. 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 affirm the hearing officer's determination in case number 03 that claimant sustained a compensable aggravation injury on \_\_\_\_\_, and that he had disability from January 13, 2000, through April 19, 2001. We reverse the hearing officer's determination in case number 02 that claimant's \_\_\_\_\_, compensable low back injury is not a producing cause of his L3-4 disc bulging and spondylitic spurring, L4-5 disc protrusion/herniation, or L5-S1 disc bulging and render a decision that claimant's \_\_\_\_\_, compensable low back injury is a producing cause of his L3-4 disc bulging and spondylitic spurring, L4-5 disc protrusion/herniation, or L5-S1 disc bulging.

\_\_\_\_\_  
Judy L. S. Barnes  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Robert E. Lang  
Appeals Panel  
Manager/Judge

\_\_\_\_\_  
Philip F. O'Neill  
Appeals Judge