APPEAL NO. 012400
FILED NOVEMBER 28, 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 (CCH) was held on September 6, 2001. The hearing officer concluded that he did not have the jurisdiction to determine whether the respondent's (claimant) compensable injury (of _____) included the diagnosed cervical herniated disc at C4-5.

The appellant (self-insured) appeals and argues that the hearing officer erred in his determinations and that he further erred in not allowing discovery requests or a continuance. There is no response from the claimant contained in our file.

DECISION

We reverse and remand.

DENIAL OF MOTIONS

The self-insured appeals the hearing officer's decision to deny its Motion for Continuance and discovery motions. The hearing officer found that there was no good cause to continue the hearing or allow the discovery motions. Whether good cause exists is a question of fact and a finding on that issue will be reversed only on a showing of an abuse of discretion. Texas Workers' Compensation Commission Appeal No. 950115, decided March 3, 1995; Texas Workers' Compensation Commission Appeal No. 93774, decided October 14, 1993. To obtain reversal of a judgment based on the hearing officer's abuse of discretion an appellant must first show that the denial of the motion was, in fact, an abuse of discretion and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). The record does not establish that the hearing officer acted without reference to any guiding rules and principles in denying the motions. We are satisfied that the hearing officer did not abuse his discretion. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

JURISDICTION

On _____, while he was pushing a "man lift" at work, the claimant sustained an injury when he fell, hitting his shoulder. The self-insured accepted the shoulder injury and cervical sprain but contends that the injury does not extend to any injury beyond those, including the diagnosed cervical herniated disc at C4-5. On April 5, 2001, the claimant's doctors filed a request under Texas Workers' Compensation Commission (Commission) rules for cervical surgery related to the injury. The self-insured's second opinion doctor concurred with the need for surgery and on May 30, 2001, the Commission issued a determination letter that the carrier was liable for the costs of surgery. The hearing officer

erroneously concluded that he did not have jurisdiction to decide the issue before him because, while the issue was phrased as an extent of injury issue, the real issue was whether the self-insured was liable for spinal surgery.

We have previously visited this issue with this hearing officer and have held that while there may be a determination letter concerning spinal surgery that has become final, that does not preclude an issue concerning the extent of the injury. *See* Texas Workers' Compensation Commission Appeal No. 971297, decided August 28, 1997. In Texas Workers' Compensation Commission Appeal No. 950517, decided May 17, 1995, the Appeals Panel stated:

> We next address the carrier's contention that it was premature for the hearing officer to render a decision on the carrier's liability for spinal surgery since a benefit [CCH] was set for April 19, 1995, to determine whether the claimant's back problems are related to the compensable injury [the CCH regarding spinal surgery was held in March 1995]. . . . The issue of the compensability of the claimant's back condition could move through a benefit review conference at the same time that the issue concerning the liability for payment for spinal surgery could move through the medical dispute resolution process in the medical review division. The fact that either dispute could be scheduled for a hearing before a Commission benefit [CCH] officer does not mean that either dispute resolution process must be stopped at any point, especially where time may be of the essence, such as in a claim involving a dispute over the need for spinal surgery. The hearing officer determined that the carrier may not avoid liability for the reasonable and necessary costs for spinal surgery for failure to have a second concurring opinion before the surgery and stated that he was not determining the compensability issue or any other defenses the carrier may have for liability or the reasonableness of medical costs. [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206(b)(1)] Rule 133.206(b)(1) provides that the carrier is liable in situations listed in the rule for the reasonable and necessary costs of spinal surgery related to the compensable injury (emphasis added). The hearing officer did not exceed his authority in making a determination limited to the second opinion on spinal surgery issue and pointing out that the compensability issue had not been resolved.

In Texas Workers' Compensation Commission Appeal No. 961335, decided August 26, 1996, a spinal surgery case, we stated that the hearing officer correctly determined that the carrier in that case was liable for spinal surgery, but that the determination "does not preclude the carrier from later questioning, in the proper forum, whether any part of the surgery performed was reasonable and necessary medical treatment for the compensable injury." We also noted in that case that to the extent the carrier was urging that additional herniated discs were solely caused by a motor vehicle accident, that issue was not before the hearing officer. However, we noted that "to the extent that such an issue exists in this case, it must be pursued in a separate dispute resolution process." In Texas Workers'

Compensation Commission Appeal No. 960781, decided May 31, 1996, we reviewed our decisions in Appeal No. 950517, *supra*, and Texas Workers' Compensation Commission Appeal No. 951753, decided December 8, 1995, where we stated that there was no reason that issues of compensability and liability for spinal surgery cannot proceed at the same time. After review of those decisions in Appeal No. 960781, *supra*, we wrote that "none of these cases indicated that an issue of compensability that reaches a [CCH] should not be considered and determined."

Based on the above-cited Appeals Panel decisions, we conclude that it was error for the hearing officer to determine that he did not have subject matter jurisdiction to consider the issues before him and we reverse the hearing officer's decision and remand the case to the hearing officer to make findings of fact, conclusions of law, and a decision, based on the evidence of record, on the issues that were before him at the CCH.

Pending resolution of the remand, a final decision has not been reached 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 Commission's Division of Hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993. Saturday, Sundays, and holidays listed in Section 662.003 of the Texas Government Code are not included in the computation of the time.

The true corporate name of the self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is:

U.S. CORPORATE SERVICES
800 BRAZOS STREET
AUSTIN, TEXAS 78701.

Susan M. Kelley
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge