APPEAL NO. 020057
FILED FEBRUARY 21, 2002

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 December 17, 2001. With respect to the disputed issues, the appellant self-insured (carrier herein) appealed the hearing officer's determination that the compensable injury includes an injury to the lumbar spine of the respondent (claimant), namely a two-to-three millimeter bulge at L4-5 abutting the nerve root and foramen with facet joint hypertrophy. Carrier also contends that the hearing officer was biased and made findings on issues not before her. Claimant files a response urging affirmance.

DECISION

As modified, we affirm the hearing officer's decision and order.

Carrier contends that the hearing officer erred in determining that the compensable injury includes an injury to the lumbar spine, namely a two-to-three millimeter bulge at L4-5 abutting the nerve root and foramen with facet joint hypertrophy. We have reviewed the complained-of determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. The hearing officer could consider the MRI evidence, claimant's testimony, and the medical reports from Dr. D in making her determination. We conclude that the hearing officer's determination regarding extent of injury is 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).

Carrier complains that the hearing officer was biased and that she acted as an advocate for claimant. We note that carrier did not object to the hearing officer's discussion of maximum medical improvement (MMI). We perceive no reversible error. Regarding carrier's assertion that the hearing officer made findings on issues not before her, we strike Finding of Fact No. 3 as surplusage. The finding discusses MMI, which was not an issue before the hearing officer. Thus, we modify the decision and order to strike that finding. We also find no reversible error regarding the hearing officer's statement that claimant had not filed an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) for the _____, injury. Although such a TWCC-41 is included in the record, no reversible error resulted.

The hearing officer's decision and order are affirmed as modified.

The true corporate name of the self-insured employer is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

CR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Judy L. S. Barnes
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Terri Kay Oliver
Appeals Judge