

APPEAL NO. 020427
FILED APRIL 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 012365, decided November 26, 2001, the Appeals Panel reviewed the resolution of extent-of-injury and disability issues by the hearing officer and determined that she erred as a matter of law. In her Decision and Order, dated August 31, 2001, issued following a contested case hearing held on August 28, 2001, the hearing officer failed to give effect to so much of the Benefit Review Conference (BRC) Agreement of the parties as agreed that the appellant's (claimant) compensable injury does not extend to or include a lumbar disc herniation. Our decision in Appeal No. 012365 reversed the hearing officer's finding and conclusion which extended the claimant's compensable injury to include herniated lumbar discs and remanded the case for the hearing officer to determine solely whether the claimant had disability from the compensable injury. The hearing officer did not convene a remand hearing but did issue a Remand Decision and Order dated January 29, 2002, which determines that the claimant had disability from June 29 through July 29, 2000. The claimant appeals this determination, contending that her evidence established that she "was off work under the instruction of her treating doctor for her compensable injury from _____ and continuing through the present." Further the claimant "asserts again that the original injury included the extruded discs at L4-L5 & L5-S1 which required surgery" and that the BRC Agreement "included lumbar stenosis, arthritis and degenerative herniation." The respondent (carrier) urges in response that the hearing officer's resolution of the disability period is sufficiently supported by the evidence and that in her appeal the claimant is trying to resurrect the extent-of-injury issue already disposed of in our prior decision.

DECISION

Affirmed.

As was noted in our earlier decision, no testimony was presented at the hearing held on August 28, 2001, and the two disputed issues, extent of injury and disability, were resolved by the hearing officer based on the documentary evidence and the arguments of the parties. We agree with the observation of the hearing officer in her discussion of the evidence that her remand finding of disability (which, by definition, has to be a result of the compensable injury) from June 29 through July 29, 2000, is supported by the medical records of the claimant's treating doctor at that time, Dr. C, and that later medical records relate to the claimant's lumbar disc herniations and need for surgical treatment. The challenged finding and conclusion on the existence and period of disability, which are fact issues for the hearing officer, are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Notwithstanding our decision in Appeal No. 012365, *supra*, the claimant "asserts

again that the original injury included the extruded discs at L4-L5 & L5-S1 which required surgery”; that the BRC agreement clearly included extrusions as part of the compensable injury and only excluded “other degenerative conditions” which “included lumbar stenosis, arthritis and degenerative herniation”; and that “the parties never intended to affect coverage for the extrusion/herniation which the carrier agreed to cover in the agreement.” However much the claimant may wish to include herniations as compensable extrusions, the BRC Agreement, as we held in our prior decision, clearly excluded herniations from the compensable injury. The disputed issue on the extent of the injury addressed at the August 28, 2001, hearing specified herniations. The BRC Agreement stated that herniations were not part of the compensable injury and our prior decision enforced that agreement. There was no extent-of-injury issue before the hearing officer or the Appeals Panel on extrusions.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ZENITH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JEFF AUTREY
ROAN & AUTREY
710 FIRST STATE BANK
400 W. 15TH STREET
AUSTIN, TEXAS 78701-1647.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Michael B. McShane
Appeals Judge