

APPEAL NO. 032972
FILED JANUARY 6, 2004

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 October 23, 2003. The hearing officer determined that respondent 1's (claimant) compensable injury of _____, extends to include avascular necrosis of the head of the femur of the right hip.

The appellant (carrier) appeals, contending that the medical evidence does not support the hearing officer's decision and that the hearing officer misstates or overstates the medical evidence to support his decision. Neither the claimant nor respondent 2 (subclaimant) filed responses.

DECISION

Affirmed.

The claimant was a ranchhand and on _____, while working in a "deer pond," the claimant slipped and fell on his left hip. The parties stipulated that the claimant sustained a compensable injury to his left hip. The claimant developed avascular necrosis and had a left hip replacement on September 14, 1999. Sometime in the spring or summer of 2000 the claimant began having problems with his right hip. Dr. Z in a report dated November 27, 2000, in assessing an impairment rating (IR) for the left hip, comments that the right leg pain was secondary due to the left leg being shorter (due to the hip surgery) than the right leg which "altered mechanics as [claimant] walked." Dr. Z however, felt the claimant was at maximum medical improvement on September 27, 2000, and assigned an IR. The claimant however, continued to have problems and developed avascular necrosis in the right hip. The carrier, based on a utilization review report dated April 30, 2000, authorized a right hip replacement which was performed on May 14, 2002. The carrier subsequently disputed that the compensable injury extended to the right hip.

The hearing officer, in his Statement of the Evidence, commented "all of the doctors involved concluded that the right hip avascular necrosis was a causal result of the original compensable injury to the left hip, except one doctor in March 2003, who is not given much credibility." We agree with the carrier insofar as that comment is an overstatement. Our review of the records indicates complaints of right leg and hip pain in the spring/summer of 2000 and Dr. Z in his November 27, 2000, report makes the connection how this pain was due to the shorter left leg. We find no medical reference to the effect that the altered gait due to the shorter left leg "led to the lack of blood through that area [the bursa at the top of the femur] causing the bone to start dying," however, that is an inference that the hearing officer could draw from the evidence.

Dr. R was a Texas Workers' Compensation Commission independent medical examination doctor, who was asked for an opinion on whether the avascular necrosis of the right hip related to the original _____, left hip injury. In a report dated March 3, 2003, Dr. R stated that the right hip is "not related." One of the reasons given for this opinion was that the claimant had the left hip surgery on September 14, 1999, and "[i]t seems that he did not have significant pain [in the right hip] for over a year" a statement that is clearly incorrect. Among the documents Dr. R was provided was "11/27/00 [Dr. Z] [Report of Medical Evaluation] TWCC-69, IR 10%." Dr. R makes no mention of Dr. Z's narrative of November 27, 2000, where Dr. Z clearly discusses right leg pain due to left leg shortening which "may have produced" bursitis on the right due to mechanical factors. Apparently, the carrier sent the claimant to Dr. O for a required medical examination. Dr. O, in a report dated March 20, 2003 (two and a half weeks after Dr. R's report), commented that after the left hip replacement for avascular necrosis, the claimant "continued to have multiple problems of the right hip, as the left hip replacement caused him to have a leg length discrepancy." Dr. O responded to certain questions (not in evidence) stating:

We are asked what extent of body areas are involved in this injury and it appears that this bilateral hips and lumbar spine were involved.

We are asked whether the employee's subjective complaints are consistent with exam findings and they are.

We are asked whether the injured worker's current complaints are causally related to the compensable injury of _____ and they are. [Emphasis added.]

The carrier complains that the hearing officer discredits Dr. R's report because he "is only a general practitioner who does not specialize in orthopedics or neurology" but then the hearing officer created his own medical theory of causation and "uses it as a basis for his decision." While we may agree that the hearing officer overstated some of the medical evidence, the hearing officer is nonetheless entitled to draw certain inferences and conclusions from the evidence. Using Dr. Z's medical theory of causation the hearing officer could find that Dr. O's conclusions are based on Dr. Z's theory and that Dr. R did not address Dr. Z's theory. It boils down to the fact that Dr. R gives one conclusory opinion and Dr. O gives another. The hearing officer adopted Dr. O's conclusions as supported by Dr. Z's causal theory.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are supported by sufficient evidence, are not incorrect as a matter of law and 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 decision and order.

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

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge