

APPEAL NO. 980213
FILED MARCH 23, 1998

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 convened on October 21, 1997, with hearing officer. The issues reported as unresolved at the benefit review conference (BRC) were: (1) is the compensable injury of _____, a producing cause for the total knee replacements of the respondent's (claimant) knees; (2) did the appellant (carrier) dispute that the total knee replacements to both knees were part of the compensable injury on or before the 60th day after receipt of notice; and (3) what is the claimant's impairment rating (IR). The hearing officer announced that there had been an off-the-record discussion of the issues; that he did not have jurisdiction over the first two issues; that the third issue was not ready for resolution until a decision had been made on the first two issues; and that, on his own motion, he granted a continuance for the Medical Review Division of the Texas Workers' Compensation Commission (Commission) to resolve the first two issues. Another session of the CCH was held on January 13, 1998. The carrier had sought resolution by the Medical Review Division of the question of whether the knee replacements were reasonable and necessary medical care for the compensable injury, and the parties had not received a resolution of that question from the Commission. The hearing officer discussed aggravation of preexisting conditions and extent of injury, attempted to get agreement to amend the issues, was not able to get an agreement, and stated that the issues to be resolved were as stated in the BRC report. The parties stipulated that the claimant sustained a compensable injury to both knees on _____. The hearing officer determined that the carrier disputed that the total knee replacements to both knees were part of the compensable injury on or before the 60th day after receipt of notice; that the compensable injury of _____, is a producing cause for the total replacements of the claimant's knees; and that the claimant's IR is 16% as determined by the Commission-selected designated doctor. The carrier appealed. First, it contended that the hearing officer did not have jurisdiction to decide whether the claimant's compensable injury was a producing cause for the total knee replacements and that that issue was one for the Medical Review Division to decide. Alternatively, the carrier contended that the compensable injury did not aggravate the claimant's preexisting osteoarthritis and that the compensable injury is not a producing cause of the need for the total knee replacements. The carrier also contended that the IR assigned by the designated doctor cannot be considered because he included impairment for bilateral knee replacements in the IR. The carrier urged that the hearing officer erred in not permitting (Mr. D) to testify. The carrier requested that the decision of the hearing officer be reversed. A response from the claimant has not been received.

DECISION

We reverse and render.

The parties stipulated that the claimant sustained a compensable injury to both knees on _____. Claimant testified that he fell and landed on both knees. A medical report dated the next day indicates that the diagnosis is contusion of both knees. The claimant denied having knee problems prior to the date of the compensable injury. A report from (Dr. B) dated May 29, 1996, states that the claimant had significant knee pain secondary to degenerative arthritis, that he was currently being treated for deep venous thrombosis, that he recommended that the claimant use Naprosyn and a walker, that the claimant will ultimately require total knee replacement, but that this should be delayed approximately 12 months. A note from (Dr. T) dated August 12, 1996, states that the claimant has a blood clot in the left leg and that knee surgery is planned. On February 11, 1997, Dr. B performed bilateral total knee replacements. (Ms. L), an adjuster who handled the claimant's workers' compensation claim, testified that at the time of the surgery, the insurance company providing health coverage was being billed for services rendered; that soon after the surgery, the carrier was not asked to pay for the surgery or follow-up care; and that the carrier was asked to pay for the walker used by the claimant. She said that a dispute concerning liability for the knee replacements had been filed with the Medical Review Division and that a decision from that division had not been received.

In Texas Workers' Compensation Commission Appeal No. 94404, decided May 20, 1994, the Appeals Panel set forth provisions of the 1989 Act pertaining to liability for compensation and medical disputes and wrote:

The 1989 Act provides for dispute resolution using a BRC, CCH, and Appeals Panel to resolve issues concerning compensability. If the injury is determined to be compensable, then the medical dispute resolution process may be used to determine if payment should be made for a medical service, i.e. was the service reasonable and necessary, Texas Workers' Compensation Commission Appeal No. 94326, decided May 2, 1994.

In Texas Workers' Compensation Commission Appeal No. 971871, decided October 29, 1997 and Texas Workers' Compensation Commission Appeal No. 971967, decided November 10, 1997, the Appeals Panel stated that a hearing officer does not have jurisdiction over whether medical treatment is reasonable and necessary.

The hearing officer made the following findings of fact and conclusion of law:

FINDINGS OF FACT

2. Prior to his compensable injury on _____, Claimant suffered from advanced osteoarthritis of both knees.

3. The necessity for total knee replacement of both knees had been identified prior to the compensable injury.
4. Claimant was able to work at a sedentary position and avoid the need for total knee replacement for an indefinite period of time prior to his compensable injury of _____.
5. Claimant's compensable injury of _____, exacerbated Claimant's pre-existing osteoarthritis of both knees.
6. As a result of the exacerbation of his bilateral knee osteoarthritis, Claimant underwent bilateral total knee replacement on February 11, 1997.

CONCLUSION OF LAW

3. The compensable injury of _____ is a producing cause for the total knee replacements of the Claimant's knees.

Injury means damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. Section 401.011(26). Compensable injury means an injury that arises out of and in the course and scope of employment for which compensation is payable. Section 401.011(10). Medical benefit means "payment for health care reasonably required by the nature of the compensable injury and intended to:" Section 401.011(31). Health "all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. . . . The term includes: (A) medical, surgical, . . . services. . . ." Section 401.011(19). On numerous occasions, the Appeals Panel has affirmed a determination of a hearing officer that a compensable injury is a producing cause of an injury to a body part, a condition that a claimant had, or disability. However, the use of "a producing cause" with a surgical service does not confer jurisdiction on a hearing officer when it does not exist. The hearing officer did not have jurisdiction to decide that the compensable injury is a producing cause for the total knee replacements. We reverse that determination.

The hearing officer determined that the claimant's IR is 16% as determined by the Commission-selected designated doctor. The designated doctor included impairment for bilateral knee replacements in his IR. At the first session of the CCH, the hearing officer stated that it was premature to determine the claimant's IR prior to determining whether the knee replacements were reasonable and necessary. We agree. We reverse the determination that the claimant's IR is 16%. If the parties are unable to reach agreement on the claimant's IR, they may use the dispute resolution process to resolve the disagreement after the question concerning the knee replacements has been resolved.

The carrier contended that the hearing officer erred in not permitting Mr. D to testify. The carrier conceded that it did not advise the claimant that Mr. D was a person known to

have knowledge of relevant facts; but, in response to a question from the hearing officer, urged that an exhibit in evidence signed by Mr. D put the claimant on notice that Mr. D had knowledge of relevant facts. The referred-to exhibit is an employer's doctor referral form and does not contain the typed or printed name of Mr. D. In a space for a signature, there is a writing that appears to be three letters. In an offer of proof, Mr. D stated that it is his signature. The hearing officer stated that it did not put a reasonable person on notice that it was Mr. D's signature. We agree. The hearing officer did not abuse his discretion in sustaining an objection to permitting Mr. D to testify.

We reverse the decision and order of the hearing officer and render a decision that he did not have jurisdiction to resolve issues concerning producing cause for knee replacements and that the issue of IR was not ready for resolution.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge