

APPEAL NO. 981017

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 April 16, 1998, in (city), Texas, with (hearing officer) presiding as hearing officer. With respect to the issue before him, the hearing officer determined that the appellant's (claimant) (date of injury), compensable low back injury is not a producing cause of her current lower back and left leg pain. In her appeal, the claimant essentially argues that that determination is against the great weight and preponderance of the evidence. In its response, the respondent (carrier) urges affirmance.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable low back injury on (date of injury). The claimant's injury was diagnosed as chronic low back pain syndrome. A June 25, 1991, MRI revealed disc degeneration at T12-L1 and L4-5 and facet arthrosis at L4-5 and L5-S1. The claimant was released from a four-week pain management program for her low back pain on October 30, 1991. She testified that she returned to work in February 1992 for the employer where she sustained her (date of injury), compensable injury. In (month and year of subsequent injury), the claimant sustained a compensable injury to her cervical spine, a herniated disc, which required surgical intervention. The claimant stated that she was taken off work in April 1993 for that injury and that she has not worked since that time. The claimant stated that she occasionally had low back pain but that she was able to manage it with Tylenol or Ibuprofen, ice, and in-home traction and exercises, until December 1996, when the pain in her low back, which radiated into her left leg, became more severe. She stated that the pain in her leg was accompanied by severe cramping. She testified that the pain and cramping gradually got worse and in May 1997, she sought treatment for her low back and left leg symptoms from (Dr. B), her current treating doctor for both the (year of injury) and (year of subsequent injury) injuries. In a May 12, 1997, report, Dr. B notes that the claimant has "severe incapacitating low back and left leg pain." He states that the pain is of "undetermined etiology," however, he also notes that it "may be related to a prior work injury." In a November 10, 1997, progress report, Dr. B notes that the claimant has probable degenerative disc disease and requests an MRI, epidural steroid injections, and a series of cortisone shots, noting that "the above interventions are related to her Workers' Comp injury involving the low back form [sic] (date of injury)."

The carrier filed a Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21) dated June 6, 1997, which states its dispute, as follows:

Carrier denies medical treatment rendered to claimant after 1992. Clmt last sought med care for the (date of injury) injury on 9/28/92. Clmt did not seek any med care again until 5/12/97 while under treatment for another injury. Treating physician is unable to relate the claimant's current problems/complaints as being related to injury of (date of injury). Treating physician indicates clmt's problems are of unknown etiology. Treating physician is not the treating physician for (date of injury) claim. No causal relationship between current condition & original injury.

The carrier also introduced a Notice of Medical Payment Dispute (TWCC-62), which it filed with the Texas Workers' Compensation Commission's (Commission) Medical Review Division. The TWCC-62 contains the same paragraph quoted from the TWCC-21 in the section entitled "Rationale for Disputing Entitlement to Medical Payment or Denying Medical Necessity."

As noted above, the parties stipulated that the claimant sustained a compensable low back injury on (date of injury). Section 408.021(a) provides:

An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that:

- (1) cures or relieves the effects naturally resulting from the compensable injury;
- (2) promotes recovery; or
- (3) enhances the ability of the employee to return to or retain employment.

In this instance, a review of the TWCC-21 and the TWCC-62 filed by the carrier demonstrates that the only dispute it is pursuing concerns the claimant's entitlement to medical treatment for the (date of injury), compensable injury. The carrier specifically states that it "denies medical treatment rendered to claimant after 1992." Neither the

hearing officer nor the Appeals Panel has the authority to resolve that issue. Questions of what "health care is reasonably required by the nature of the injury" are resolved by the Commission's Medical Review Division. Section 413.031; Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.305 (Rule 133.305). This case is strikingly similar to Texas Workers' Compensation Commission Appeal No. 980213, decided March 23, 1998, where the issue before the hearing officer was whether the compensable injury was a "producing cause of the total knee replacements." In that case, the Appeals Panel reversed the hearing officer's determination that the compensable injury was a producing cause of the need for total knee replacements and rendered a decision that the hearing officer did not have jurisdiction to resolve that issue. In so doing, Appeal No. 980213 stated that the use of the "producing cause" language "does not confer jurisdiction on a hearing officer when it does not exist." Similarly, in Texas Workers' Compensation Commission Appeal No. 980256, decided March 20, 1998, the Appeals Panel struck a hearing officer's finding of fact that "the effects of the aggravation were resolved by December 4, 1994" and his order that "the carrier is not liable for benefits," based upon the determination that in making that factual finding and entering the order that the carrier was not liable for additional benefits, the hearing officer was resolving medical benefits issues that were not within his jurisdiction to consider. In Texas Workers' Compensation Commission Appeal No. 970488, decided April 28, 1997, (Unpublished), the Appeals Panel affirmed a hearing officer's determination that he did not have jurisdiction to resolve the issue of whether the claimant's "pre-existing condition is the sole cause for the Claimant's present need for a total knee replacement to the right knee." In affirming, Appeal No. 970488 states "[w]ith the compensability of the injury to the claimant's right knee on May 4, 1996, not in dispute, the hearing officer did not err in determining that he did not have jurisdiction to decide whether a total knee replacement was reasonable and necessary medical treatment." Under the guidance of the 1989 Act, and Appeal Nos. 980213, 980256, and 970488, *supra*, it is apparent that where, as in this case, it is undisputed that the claimant sustained a compensable low back injury and the only existing dispute questions whether medical treatment is "reasonably required" to treat that injury, it is the Medical Review Division and not the Hearings Division that has jurisdiction to determine that issue. Our decision does not affect the claimant's right to lifetime medical benefits. Likewise, it does not affect any party's right to pursue medical dispute resolution in the Medical Review Division. Rather, it precludes the carrier from pursuing a dispute in the Hearings Division in cases where that dispute is limited to entitlement to medical benefits and compensability is not at issue because the Hearings Division adjudicates "benefits disputes," which Rule 140.1 defines as a dispute "regarding compensability or eligibility for, or the amount of, income or death benefits."

We reverse the hearing officer's decision and order and render a decision that the hearing officer did not have jurisdiction to resolve the issue of whether the claimant's compensable injury was a producing cause of her current low back and left leg condition.

Elaine M. Chaney
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Christopher L. Rhodes
Appeals Judge