

## APPEAL NO. 981133

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 1, 1998, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant's (claimant) compensable injury was not a "producing cause" of the "current lower back condition, L4-5 disc herniation." Claimant asserts that there is a connection and that her pain from her compensable low back injury continued until added treatment was sought in 1997. Respondent (carrier) replied that this is an extent-of-injury case with sufficient evidence to support the decision of the hearing officer; affirmance is requested.

## DECISION

We reverse and render.

This is not an extent-of-injury case. The parties stipulated on the record that the claimant sustained a "compensable low back injury on (date of injury)." They agreed that the only issue was whether the compensable injury is a "producing cause" of claimant's "low back condition, an L4-5 disc herniation." Section 408.021 provides for entitlement to "all health care reasonably required by the nature of the injury as and when needed," which is then said to include curing or relieving the "effects naturally resulting from the compensable injury." *Compare to* Texas Workers' Compensation Commission Appeal No. 981110, decided July 10, 1998, which indicated that a newly disclosed abnormality at a different level of the spine than the level previously treated may be an extent-of-injury case.

Briefly, claimant was stipulated to have sustained a compensable low back injury on (date of injury); she worked in a school cafeteria. She received medical care and, according to an adjuster who testified, 13 weeks of temporary income benefits. On December 30, 1994, the doctor treating her, (Dr. K), said that claimant could return to work on January 3, 1995. Claimant saw (Dr. H) on March 28, 1995, who addressed an umbilical hernia repair and commented:

[Claimant] is complaining again of her low back pain with radiation down the backs of her legs. I have asked her to return to see [Dr. T] who in the past has provided some relief.

Claimant testified that in November 1994, Dr. T had given her an injection which did provide relief and was supposed to last six months to a year. She said that when told to return, she did not have the money to pay for this herself. She said she did not

know she could continue to get treatment under workers' compensation. Whether or not claimant knew the law about entitlement to medical benefits under Section 408.021 or had a reasonable basis for being confused as to her entitlement is not an issue. While lack of knowledge of the law may provide no excuse when a claimant fails to give notice of an injury to her employer within 30 days; for example, there is no time requirement as to when medical benefits in Section 408.021 may be sought. "As and when needed" is not then modified with a phrase such as, "as long as there has been no break in health care received of over one year or two years, etc." Similarly, "effects naturally resulting from the compensable injury" is not modified with a phrase such as, "so long as the effect occurs within one year or two years, etc." We also note that Section 408.021 does not limit lifetime medical care to only be available if the compensable injury gets no worse.

After the March 1995 entry of low back pain with radiation into the legs, claimant testified that she retired from work in May 1995 because she could not do the work, citing standing on her feet on a concrete floor and mopping. Her daughter testified that she bought claimant a back massager in 1996 because claimant was still in pain. Claimant said she would call her doctor's office from time to time but would be told to take hot baths, etc.; she continued to use over-the-counter pain medication she said. In May 1997 she returned for medical care stating that her pain had gotten worse in the last "few weeks." There was no evidence of any exacerbating event since May 1995 when claimant retired.

A CT scan taken in October 1994 said of the L4-5 level, "similar findings are identified," referring to a "mild diffuse disc bulge but no significant canal or foraminal stenosis" at the L3-4 level. (How similar the findings were was never stated.) A June 1997 CT scan states, "left paracentral disc herniation L4-5 with mild left foraminal compromise and left L5 nerve root compression."

In February 1998 Dr. T noted a history from claimant "that she has continued to hurt for years." Decreased range of motion was also noted. Dr. T then stated:

[Claimant] clearly has low back pain with right greater than left leg pain which is most likely due to her L4-5 disc herniation. In my opinion her low back pain is a direct result of her work related injury from (month and year of injury). The discs clearly were abnormal on the films done in 1994, and they have progressed and worsened when compared with the newer films

from 6/97. Treatment for her low back should definitely be covered under her Workman's Comp. claim.

Whether or not Dr. T is correct about whether treatment should be covered or not, the carrier also indicated that the issue, although stated in terms of "producing cause" of the "current low back condition, L4-5 disc herniation," is a question of medical treatment, by commenting that the "designated doctor has nothing to gain by continuing to treat or not continuing to treat" when it addressed the weight of the medical evidence.

The designated doctor, (Dr. F), evaluated claimant on December 23, 1997, and stated that she did not reach maximum medical improvement until October 24, 1997, over five months after claimant sought medical care again in May 1997. He assigned a nine percent impairment rating (IR), which included seven percent for "unoperated . . . moderate to severe degenerative changes . . . including unoperated herniated nucleus pulposus . . . ." He referred to the two CT scans and said:

This casts serious doubt, in the opinion of this examiner, that the paracentral disc herniation at L4-5 occurred as the result of the (date of injury), non-lifting, non-stooping, non-traumatic injury to the low back.

(Claimant testified that she hurt her back at work when bending over a table pressing down on a pan to break ingredients for a casserole.)

Carrier characterized an examination by a doctor it selected, (Dr. W), as also in support of its position. Dr. W, who saw claimant on October 24, 1997, said that there was symptom magnification and that he did not believe her "current symptoms" are a result of the (year of injury) injury, but Dr. W also provided this comment about the CT scans:

She has had CAT scans of her back in the past, in 1994 showing bulging discs at L4-5 and L5-S1, and a more recent one in 1997, which showed the same findings at L4-5 and perhaps an increased bulge or minor herniation of L5-S1 described to the left. [Emphasis added.]

Dr. W also indicated the question relative to claimant to be one of medical treatment by saying that his recommendation for treatment (provided in October 1997) was pain management prior to further diagnostic testing.

There was no evidence relative to income benefits that should or should not be paid and there was no argument concerning any facet of income benefits; IR was not in issue either. As stated, the parties stipulated that there was a compensable low back injury. The question presented is one for the Medical Review Division of the Texas Workers' Compensation Commission to resolve. See Texas Workers' Compensation Commission Appeal No. 981017, decided July 1, 1998. Whether or not medical care for claimant's (year of injury) compensable low back injury is "reasonably required" is not a matter for the hearing officer or the Appeals Panel. Similarly, a subissue, of whether or not health care to cure or relieve claimant's condition naturally resulting from the compensable injury should be provided, is also not a matter for the hearing officer or Appeals Panel in this case. As stated by Appeal No. 981017, our decision does not affect either party's right to seek answers to medical treatment through the Medical Review Division.

We reverse the decision and order in this case and render that the hearing officer did not have jurisdiction to resolve the issue of whether the compensable injury is a producing cause of the claimant's current low back condition, L4-5 disc herniation.

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Joe Sebesta  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Alan C. Ernst  
Appeals Judge