

APPEAL NO. 981220

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 May 12, 1998, in (city), Texas, with (hearing officer) presiding as hearing officer. The single issue before the hearing officer was "Does the Claimant continue to suffer effects from the injury of (date of injury) entitling her to benefits?" The hearing officer determined that the respondent (claimant) continues to suffer effects from the injury of (date of injury) entitling her to benefits. In its appeal, the appellant (carrier) argues that there is insufficient evidence to support the hearing officer's determination that there is a causal connection between the claimant's current symptoms and the (date of injury), compensable injury. In her response, the claimant urges affirmance.

DECISION

Reversed and rendered.

It is undisputed that the claimant sustained a compensable injury on (date of injury), in the course and scope of her employment as a paralegal. On January 7, 1994, the claimant had a cervical CT scan. The CT report states:

At C6-7, there does seem to be a soft tissue density at the level of the disc, extending into the right lateral recess and into the right neural foramen. However, this is very difficult to delineate. I suspect that there is a herniated nucleus pulposus in this location, but I would recommend an additional study, perhaps a post-myelogram CT scan would be helpful. There is no bony encroachment upon the neural foramina. The facet joints are unremarkable.

On October 29, 1993, the claimant underwent a cervical MRI, which was interpreted as revealing a "4-5 mm central to right parasagittal soft tissue disc bulge/protrusion" at C6-7.

The claimant testified that although she did not seek medical treatment for the period from January 8, 1996, to April 28, 1997, she continued to have neck, shoulder and arm pain, with numbness and tingling in her hands and headaches. She stated that she was able to control her symptoms with nonprescription medications. She testified that her pain became more severe, prompting her to return to the doctor. On March 3, 1998, the claimant had another CT scan. That test revealed "a small focal central protrusion of about 2 mm thickness" at C6-7.

In this case, and in another case decided today, Texas Workers' Compensation Commission Appeal No. 981133, decided July 15, 1998, the issue presented is not an extent of injury issue. To the contrary, a review of the diagnostic testing from 1993 and 1998 demonstrates that each of the diagnostic tests revealed bulging at C6-7. Thus, this case is unlike Texas Workers' Compensation Commission Appeal No. 981110, decided July 10, 1998, where the majority stated that where there are questions of whether a compensable injury includes a specific area or part of the body, the benefit dispute resolution system may be used to resolve those questions. In this instance, the claimant's (date of injury), compensable injury was diagnosed as a disc protrusion/bulge at C6-7. Her current diagnosis is also a bulge at C6-7; therefore, the true nature of the dispute in this case is whether the claimant is entitled to receive medical treatment for her compensable injury. Our determination in that regard is bolstered by the carrier's prayer in its closing argument that the claimant "should not be found entitled to the medical benefits she is seeking." The question of what medical treatment is "reasonably required by the nature of the injury" is one for the Medical Review Division of the Texas Workers' Compensation Commission to resolve and not for the dispute resolution process of the Hearings Division. See Texas Workers' Compensation Commission Appeal No. 981017, decided July 1, 1998, and the cases cited therein. In cases such as this, it is not the phrasing of the issue that controls whether a dispute can be properly resolved in the Hearings Division. Rather, that question turns on the nature of the dispute, and more specifically, whether compensability or eligibility for, or the amount of, income or death benefits is at issue. Here the issue presented does not encompass a compensability dispute, in that the (date of injury), compensable injury is a C6-7 disc injury. Likewise no income or death benefits issue is presented for resolution. Accordingly, the issue in this case is not properly before the hearing officer or the Appeals Panel. Appeal Nos. 981133 and 981017, *supra*.

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 continues to suffer the effects from her (date of injury), compensable injury entitling her to benefits.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. Stephens
Appeals Judge

I respectfully dissent.

While I fully agree that the Benefits Dispute Resolution process is not the proper forum to determine what is reasonable and necessary medical or health care, I do not agree that entitlement to medical benefits for a compensable injury is forever barred from the dispute resolution process despite circumstances like those presented here, or for that matter in the cited case of Texas Workers' Compensation Commission Appeal No. 981133, decided July 15, 1998. The majority holds that this is not an extent of injury case, and perhaps it is not, but rather the real nature of the dispute is whether the claimant is entitled to receive medical treatment for her (year of injury) compensable injury. I cannot advance to that conclusion under the circumstances presented in this or similar cases. It seems to me that a legitimate benefits dispute issue regarding medical benefits can arise even though a compensable injury was earlier determined. The circumstances here give rise, in my opinion, to such a case. Here we have a compensable back injury in (month and year of injury) which was determined to be compensable and benefits were awarded. Following apparent conservative medical treatment, the claimant acknowledged she did not seek any medical treatment for a period of some 14-15 months although she did testify that she did experience some pain and took nonprescription medication. The claimant had a CT scan on March 3, 1998 which showed a similar protrusion as an October 1993 MRI. The hearing officer, correctly in my opinion, found that the claimant's current condition was causally connected to the compensable injury of (year of injury) and that the claimant was entitled to benefits. The majority hold that this was not properly before the hearing officer but was a matter for the Medical Review Division and medical dispute resolution process since the question is what medical treatment is "reasonably required by the nature of the injury." I disagree that the issue is only one of reasonable medical care or the implication that once a compensable injury is established, medical benefits necessarily go on ad infinitum regardless of intervening circumstances, as here, which give rise, in my opinion to a legitimate issue as to whether a current conditions is causally related to a compensable injury occurring many years earlier. This is not to say a carrier is given carte blanche to re-litigate compensability issues; rather, that when there are intervening circumstances like

those in this case, a legitimate benefits dispute resolution issue is properly raised. I would affirm the hearing officer's decision.

Stark O. Sanders, Jr.
Chief Appeals Judge