

APPEAL NOS. 002967 AND 010017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 4, 2000, a consolidated contested case hearing (CCH) was held. The hearing officer issued two decisions, one with regard to the issue of whether the compensable injury is a producing cause of the claimant's current cervical injury after _____, and one with regard to the issues of whether the claimant sustained a compensable injury on _____, and whether the claimant had disability resulting from the injury sustained on _____. The hearing officer resolved the disputed issues by deciding that the claimant's compensable injury of _____, is a producing cause of the claimant's current cervical condition after _____; that the claimant did not sustain a compensable injury on _____; and that the claimant did not have disability as a result of the injury sustained on _____. The claimant and carrier 1, who provided workers' compensation insurance coverage for (employer) in 1994 and is the workers' compensation insurance carrier for the claimant's 1994 compensable injury, appealed the hearing officer's decisions and carrier 2, who provided workers' compensation insurance coverage for the employer on _____, responded.

DECISION

The hearing officer's decisions are reversed and remanded.

It is undisputed that the claimant sustained a compensable injury to his cervical spine on _____. The medical records reflect that he had fusions at C4-5 and C5-6. The claimant testified that he sustained a cervical injury at work on _____, while manually closing a heavy electronic security gate that malfunctioned. Dr. R, the claimant's treating doctor for the 1994 injury wrote that the claimant sustained an injury at the C3-4 level on _____, when the claimant closed the gate on _____. Dr. S reviewed medical records and wrote that there is no objective medical evidence to support the existence of a work injury on _____, and that the medical records suggest the natural progression and deterioration of a preexisting condition in the cervical spine.

In the decision in which the hearing officer determined that the claimant did not sustain a compensable injury on _____, and that the claimant did not have disability, the hearing officer found that the claimant sustained a flare-up of his cervical spine injury while closing the security gate but that that incident did not aggravate the claimant's preexisting condition, and in his Statement of the Evidence the hearing officer wrote: "The preponderance of the credible evidence indicates that the claimant did not sustain an aggravation of the 1994 [sic]." In the decision in which the hearing officer determined that the compensable injury of _____, is a producing cause of the claimant's current cervical injury after _____, the hearing officer found that on _____, the claimant sustained a flare-up of his cervical spine injury while manually closing the security gate and that the current cervical condition is a result of the _____, compensable

injury, and in his Statement of the Evidence wrote: “The preponderance of the credible evidence indicates that the claimant did indeed sustain an aggravation of the 1994 injury.”

The claimant correctly points out in his appeal that the hearing officer made contradictory statements regarding whether he sustained an aggravation of his 1994 injury. Section 401.011(26) defines “injury” as damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm and that the term includes an occupational disease. In Cooper v. St. Paul Fire & Marine Insurance Company, 985 S.W.2d 614 (Tex. App.-Amarillo 1999, no pet.), the court held that “to the extent that the aggravation of a prior injury caused damage or harm to the physical structure of the employee, it can reasonably be said that the resulting condition fell within the literal and plain meaning of ‘injury’ as defined by the 71st Legislature” and that “the legislature intended the meaning of ‘injury’ to include the aggravation of preexisting conditions or injuries.” See also Peterson v. Continental Casualty Company, 997 S.W.2d 893 (Tex. App.-Houston [1st Dist.] 1999, no pet.), in which the court held that the aggravation of a preexisting condition is a compensable injury for purposes of the 1989 Act. In Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994, the Appeals Panel noted that to prove an aggravation of a preexisting condition there must be some enhancement, acceleration, or worsening of the underlying condition from the injury and not just a mere recurrence of symptoms inherent in the etiology of the preexisting condition.

The hearing officer has made contradictory statements regarding whether the claimant sustained an aggravation of his 1994 injury. We remand the decisions to the hearing officer for the hearing officer to clear up the contradiction by making further findings of fact and a determination as to whether the claimant sustained a new cervical injury in the course and scope of his employment on _____, by way of an aggravation of a preexisting injury or condition and whether the claimant has had disability. In addition, the hearing officer should correct his Statements of the Evidence to reflect that the claimant testified that the 1994 injury involved the C4-5 level and that the claimed injury of 1999 involved the C3-4 level. Copies of the hearing officer's decisions on remand should be sent to all parties.

The hearing officer's decisions and orders are reversed and remanded. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section

410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge