APPEAL NO. 92538
FILED NOVEMBER 25, 1992

On September 1, 1992, a contested case hearing was held. The hearing officer determined that the claimant's problems with her back and hip are related to her work-related injury of _____, and are compensable under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). Appellant, hereinafter the carrier, contests certain findings of fact and conclusions of law, requests that we review the hearing officer's determination regarding venue of the hearing, and requests that we reverse the hearing officer's decision. No response was filed by respondent, hereinafter the claimant.

DECISION

The decision of the hearing officer is affirmed.

This case concerns treatment for a compensable injury which causes further injury. The issues raised but not resolved after the benefit review conference were: (1) whether the claimant's problems with her back and hip are related to her _____ injury; and (2) whether the claimant's treatment for choking is related to her _____ injury. When the hearing officer stated what the issues were from the BRC report, neither party requested the hearing officer to include any additional issue for resolution at the hearing. During the hearing, the parties entered into a written agreement wherein the claimant agreed that her choking incident and the treatment she received for it are not related to her _____ injury and that she did not wish to pursue that issue.

Before she started to work for the employer as a pleater on _____, the claimant had worked for two years as a floor supervisor at a department store. She had not worked outside the home before that. The claimant's work as a pleater required her to sew pleats into drapery panels. She said she had not experienced any problems with her hands until her second day of work for the employer. On that day, she had numbness and tingling in her hands, the right worse than the left, and she went to the company nurse who gave her a bandage to put on her right hand. The claimant said the pain went all the way up to her shoulder. The claimant continued to work until September 6, 1991, when she said she could not take the pain in her hands any longer and quit. The claimant saw several doctors, was diagnosed as having bilateral carpal tunnel syndrome, left greater than right, and had a left carpal tunnel release performed on October 24, 1991. Subsequently, she was treated at a hand rehabilitation center and then received physical therapy. The claimant testified that during one of her physical therapy sessions the therapist was applying pressure to her left shoulder to release a knot when she suddenly felt something travel down the side of her spine and into her left hip and that from then on she has experienced left hip pain, low back pain,

and pain radiating into her left leg. The claimant's husband testified that the claimant began to complain of shoulder and arm pain after she started working for the employer, that she started to complain of low back pain after one of her visits to (Ms. S) for therapy, that she had not complained of numbness and tingling in her hands before she started working for the employer, and that she had not complained of low back pain before receiving therapy from Ms. S.

On the day the claimant quit work she visited Dr. S, M.D., and reported a history of having developed pain in the left elbow and numbness and intermittent pain in her left hand after starting to work for the employer. The claimant testified that she also reported having pain up to her left shoulder. Dr. S diagnosed left carpal tunnel syndrome and tendinitis in the left elbow and referred the claimant to Dr. G, M.D., a neurologist. Dr. G's progress report of September 16, 1991, indicated that the claimant told her that she was having numbness in the fingers and thumb of the left hand with pain radiating into the elbow region and occasionally up into the shoulder area. Dr. G diagnosed moderately severe median entrapment syndrome at the left wrist and mild median entrapment syndrome at the right wrist and referred the claimant to Dr. B, a hand surgeon.

Dr. B treated the claimant from September 23, 1991 to at least June 9, 1992, and diagnosed bilateral carpal tunnel syndrome, left greater than right. Dr. B noted in her initial report of September 23, 1991, that the claimant told her that sometimes the pain went all the way up to her shoulder. An October 21, 1991 report indicated that the claimant complained of hand pain and that it hurt all the way up her arm to the base of her neck. Dr. B performed a left carpal tunnel release on October 24, 1991. In November 1991, the claimant complained to Dr. B of continued pain all the way up her arm, and in December 1991 complained of pain in the shoulder and base of her neck. In December 1991, Dr. B referred the claimant to a hand rehabilitation center for a work capacity evaluation, and in January 1992 referred the claimant to the same rehabilitation center for a work hardening program. According to Dr. B's reports, the claimant continued to complain of left shoulder and neck pain in January and February of 1992. An MRI of the left shoulder was normal. In response to the question of whether the claimant's work for the employer aggravated a preexisting condition, Dr. B wrote in January of 1992 that "[p]robably so, since she started complaining of the problem from the first day of her employment there."

A report from the hand rehabilitation center dated February 14, 1992, noted that the claimant was discharged that day and that Dr. B had agreed to a "trial soft tissue therapy" for the claimant for her residual pain. The therapy was to be performed by Ms. S, OTR. Two written orders of Dr. B revealed that she ordered occupational therapy services for the claimant with Ms. S for nine weeks beginning February 19,

1992. According to those orders, the therapy was to: "1. Restore AROM LUE TO WNL; 2. Restore Strength BUE TO WNL; 3. Restore Endurance BUE to WNL; 4. Reduce constrictions, relieve pain; and 5. Restore muscle flexibility and function."

Ms. S's initial evaluation report of February 19, 1992, indicated that the claimant told her that she had pain in her left shoulder and on the left side of her neck. She also reported tightness across the middle of her back and stiffness and pain in her low back. Ms. S reported that her tests and the claimant's history indicated that the claimant had experienced knotting in her "LUE scapula retractors and/or extensor of the humerus" while working. According to Dorland's Illustrated Medical Dictionary, Twenty-sixth Edition (W.B. Saunders, 1981), the "scapula" is the flat, triangular bone in the back of the shoulder; the shoulder blade. In a report dated March 9, 1992, Dr. B wrote that the claimant had a symptomatic impingement syndrome and had trigger points in her upper trapezius and scapular area and recommended that the claimant continue with her therapy. The claimant testified that at one of her therapy sessions, when Ms. S was putting pressure on a knot in her shoulder, she felt "like a nerve just traveled all through the side of my spine and went into the bottom of my hip." She said she told Ms. S to stop the therapy and reported her hip pain to her. The claimant said that she has had a lot of problems and pain with her hip and back and problems walking and bending since that incident. The claimant further testified that Ms. S explained to her that the knot she caused to subside in the claimant's "upper scapula" caused a pull in the nerve and caused her hip to rotate which caused the problem with her hip and her walking. Several of Ms. S's therapy progress notes indicated that the claimant reported hip pain to her. In a letter to Dr. B date April 15, 1992, Ms. S wrote that the claimant had specific tightness at the origins on the iliac causing posterior rotation of the pelvis with difficulty in walking. According to Dorland's Illustrated Medical Dictionary, Twenty-sixth Edition (W.B. Saunders 1981), the "iliac" pertains to the "ilium" which is the expansive superior portion of the hip bone.

Dr. B reported on April 15, 1992, that the claimant was having pain in her left hip area which started about one and one-half weeks before when she was being "manipulated" by Ms. S. After giving the claimant a physical examination, Dr. B gave her impression of the claimant's condition as "[p]ressure on sciatic nerve and some radicular symptoms, as well as some low back spasm." Dr. B recommended that the claimant stop seeing Ms. S and get an orthopedic consult. The claimant went to Dr. W, M.D., an orthopedic surgeon from April 22nd through July 1992. The claimant continued to report low back pain to Dr. B in May 1992. On June 9, 1992, Dr. B wrote that "[s]he [the claimant] has an appointment with Dr. W tomorrow for her back discomfort. I certainly think it is related to the therapy and sequence of events, and I would recommend that her W/C claim continue to treat this as it seems that whenever her shoulder is hurting more, her back is also hurting more."

Dr. W reported that the claimant told him that on one of the manipulations during therapy for treatment of her shoulder that she had the onset of severe left low back pain which has persisted. He stated that he felt that the claimant's back problems began when she was undergoing therapy for her shoulder. He diagnosed impingement syndrome, left shoulder, and spondylolisthesis of L5-S1. In a letter dated June 24, 1992, the carrier asked Dr. W for his opinions on whether the claimant is suffering from impingement syndrome of her left shoulder, and, if so, whether the impingement related to her work; whether there is any medical reason for manipulation of the entire spine for a diagnosis of either bilateral carpal tunnel or left shoulder impingement; whether the therapy Ms. S was performing on the claimant related to an on-the-job injury; whether Ms. S's therapy was medically necessary; and whether the therapy the claimant received from Ms. S directly resulted in the complaints of lower back pain. On July 15, 1992, Dr. W responded that the claimant was referred to him by Dr. B for treatment of impingement syndrome of the left shoulder which had responded well to physical therapy; that he could not answer the question as to whether the impingement syndrome is related to work; that there is no medical reason for manipulation of the entire spine for a diagnosis of either bilateral carpal tunnel or left shoulder impingement; that he could not answer the question as to whether the therapy given by Ms. S was work related; that Ms. S's therapy was not medically necessary; and that according to the claimant's history, her lower back pain began following a treatment by Ms. S. According to the claimant, Ms. S was not manipulating her entire spine at the time she felt the hip pain, but rather was applying pressure to her left shoulder to release a knot.

Also in evidence was a medical report dated March 4, 1992, from Dr. F, M.D., a hand surgeon whom the claimant saw at the request of the carrier. Dr. F indicated that it appeared that the claimant benefited from the carpal tunnel surgery and that attention at the time of his examination was directed to residual shoulder and neck symptoms of undetermined etiology. Dr. F stated that the claimant was indeed suffering from a bilateral carpal tunnel syndrome, but that he was unable to offer a current diagnosis with regard to her residual shoulder and neck pain. He recommended an orthopedic consultation."

As previously stated, the issue to be resolved at the hearing was whether the claimant's problems with her back and hip are related to her injury of _____. The hearing officer found and concluded as follows:

Finding of Fact No. 6. On various dates in March and April, 1992, the claimant received treatment for her left shoulder impingement from [Ms. S], a soft tissue therapist, which included manipulation and the application of pressure to the affected area of the scapula of the left shoulder.

Finding of Fact No. 7. The treatment received from [Ms. S] caused further damage and harm to the physical structure of the claimant's body, including damage and harm to her hip and back.

Conclusion of Law No. 3. The claimant's problems with her back and hip are related to her _____, injury and are compensable, pursuant to Art. 8308-1.03(10) and (27) and Art. 8308-3.01.

In contesting Finding of Fact No. 7 and Conclusion of Law No. 3, the carrier asserts that based on Dr. W's report the claimant's alleged back and hip injury did not result from proper or necessary treatment from her hand and shoulder injury; that no medical evidence was offered as to how manipulation of one's left shoulder can aggravate the congenital condition of spondylolisthesis and injure one's hip; and that the claimant has not proven by a preponderance of the evidence that her back and hip injury are related to her alleged carpal tunnel injury on _____.

For the purpose of addressing the carrier's contentions concerning Finding of Fact No. 7 and Conclusion of Law No. 3, we presuppose that the claimant sustained a bilateral carpal tunnel injury and a left shoulder impingement injury while working for her employer. The hearing officer found that these were the injuries sustained by the claimant in Findings of Fact Nos. 4 and 5. Those findings are discussed later in this decision.

The carrier cites Maryland Casualty Company v. Sosa, 425 S.W.2d 871 (Tex. Civ. App. - San Antonio 1968) *aff'd per curiam*, 432 S.W.2d 515 (Tex. 1968) in support of its contention that based on Dr. W's report the claimant's alleged back and hip injury did not result from proper or necessary treatment for her hand and shoulder injury. In Sosa, the Court of Civil Appeals stated that:

> The law is well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefor, causes other injuries which render the employee incapable of work.

Apparently, the carrier is contending that treatment for a compensable injury must first be shown to have been proper or necessary before such treatment can be found to have caused other compensable injuries. That proposition was questioned in the later case of Home Insurance Company v. Gillum, 680 S.W.2d 844 (Tex. App. - Corpus Christi 1984, writ ref'd n.r.e.). In Gillum, the carrier contended that the trial court erred in not requiring the jury to find that the aggravating medical treatment was reasonable or necessary as a result of the initial injury. After determining that the carrier had failed to properly request an instruction containing such a requirement, the court stated:

> Furthermore, appellant has not cited and we have not found any authority for the imposition of the "reasonable and necessary" requirement. The trial court correctly stated the law in its submission of Special Issue No. 2, as the instruction to Special Issue No. 2 utilized the language found in Western Casualty & Surety Co. v. Gonzales, 506 S.W.2d 303 (Tex. Civ. App. - Corpus Christi 1974), *aff'd* 518 S.W.2d 524 (Tex. 1975), wherein our Court stated:
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> > Where disability or death results from medical treatment instituted to cure and relieve an employee from the effects of his injury, it is regarded as having been proximately caused by the injury and is compensable; such aggravation is regarded as a probable sequence and natural result likely to flow from the injury. (Citations omitted).

We observe that under both the former workers' compensation law, Article 8306, Sec. 7, and the current law, Article 8308-4.61, an injured employee is entitled to health care reasonably required to cure or relieve the effects naturally resulting from the injury. However, presupposing that the medical treatment for the compensable injury must be "proper or necessary," or "reasonable or necessary," before such medical treatment can be found to have caused another compensable injury, we conclude that Dr. B's authorization to Ms. S, the therapist, to render therapy services to the claimant to relieve the claimant's pain is sufficient evidence that the treatment rendered by Ms. S was "proper or necessary," or "reasonable or necessary." It is undisputed that the claimant complained of left shoulder pain to Dr. B on a number of occasions and that she, as well as Dr. W, diagnosed a left shoulder impingement or an impingement syndrome in the scapular area. Consequently, the order to Ms. S to provide therapy treatment to "relieve pain" could reasonably be taken to include the pain the claimant experienced in her left shoulder.

Furthermore, we observe that Dr. W's opinion that the treatment rendered by Ms. S not medically necessary is based on the assumption that Ms. S was manipulating the claimant's entire spine at the time of the incident involving the left hip pain. In fact, the uncontroverted testimony from the claimant is that Ms. S was only applying pressure to the knot in her left shoulder at the time of the incident and was not manipulating her entire spine. Moreover, Dr. W's opinion that the treatment was not medically necessary is somewhat ambiguous in view of his opinion that the claimant's left shoulder impingement responded well to physical therapy. After reviewing the applicable law and the record, we conclude that the carrier's assertion that Ms. S's treatment of the claimant was not proper or necessary is not well taken and is overruled.

The carrier contends that the hearing officer erred in making Finding of Fact No. 7 and Conclusion of Law No. 3 because there was no medical evidence offered to show how manipulation of one's left shoulder can aggravate the congenital condition of spondylolisthesis and injure one's hip. Nowhere in the record do we find that the claimant claimed that her treatment from Ms. S aggravated her preexisting spondylolisthesis, nor did the hearing officer make any finding relating to aggravation of a preexisting spondylolisthesis condition. Consequently, the carrier's assertion of a lack of medical evidence on that point is not germane to the claim or the case at hand and is overruled. The claimant testified that she felt immediate pain in her hip area when Ms. S applied pressure to the knot in her left shoulder area, and Dr. B stated that she certainly thought that the claimant's back discomfort is related to her therapy and sequence of events. In Texas Employers Indemnity Company v. Etie, 754 S.W.2d 806 (Tex. App. - Houston [1st Dist.] 1988, no writ), a workers' compensation case involving medical treatment for a work-related neck injury which aggravated a preexisting back condition, the court stated that:

We conclude that appellee's testimony constitutes some evidence from which the jury could reasonably have inferred that the myelogram probably aggravated his pre-existing lower back condition and contributed to his incapacity. Appellee's testimony outlined the nature and seriousness of his original injury, described the immediate onset and successive and continuous development of the symptoms following the myelogram, and indicated the progressive worsening of his condition. We find that appellee's testimony showed a sufficiently strong, logically traceable connection between cause and result of disability. (Citation omitted).

The court noted that in a workers' compensation case, expert testimony is generally not required to prove an issue of probability, if the trier of fact has been given sufficient evidence showing the prompt onset of symptoms following a specific event and cited Insurance Co. of North America v. Kneten, 440 S.W.2d 52 (Tex. 1969).

If, however, medical evidence of causation was needed in this case, Dr. B's opinion constituted some evidence that the claimant's back and hip problems were caused by the therapy administered by Ms. S. The Supreme Court of Texas has held that qualifying phrases such as "I think" in a doctor's testimony does not reduce the testimony to no evidence where the substance of the medical testimony taken in context, satisfies the law's demand for reasonable medical probability. *See* Lucas v. Hartford Accident and Indemnity Company, 552 S.W.2d 796 (Tex. 1977). As to the failure of Dr. B to give an explanation as to how manipulation of the left shoulder could have injured the claimant's hip or low back, we observe that in Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975), the Supreme Court of Texas held that a doctor's opinion on causation may or may not be buttressed by an

explanation of the process which occurred within the body; this goes to the matter of the credibility of the witness and of his opinion, but it is not a prerequisite to his expression of that opinion. While it would certainly have been better for Dr. B to explain the process by which she thought the claimant's back discomfort was related to her therapy, under the holding in Gonzales, it was not strictly required. The carrier's contention concerning lack of medical evidence is overruled.

The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given the evidence. Article 8308-6.34(e). The hearing officer could chose to believe the claimant's testimony that Ms. S was applying pressure to her left shoulder to relieve a knot when she felt the immediate onset of pain in her hip and experienced pain and problems in her hip and back since that time as well as difficulty in walking and bending. The hearing officer could also give credence to Dr. B's opinion that the claimant's back discomfort resulted from her therapy. Taking the lay testimony and the medical opinion together, the hearing officer could reasonably find from all the evidence that the treatment that the claimant received from Ms. S caused further damage and harm to the physical structure of the claimant's body, including damage and harm to her hip and back, and could reasonably conclude that the claimant's problems with her back and hip are related to her _____ injury and are compensable. Having reviewed the record, we conclude that Finding of Fact No. 7 and Conclusion of Law No. 3 are sufficiently supported by the evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *See* United States Casualty Co. v. Marr, 144 S.W.2d 973 (Tex. Civ. App. - Galveston 1940, writ dism'd judgmt. cor.); Gillum, *supra*. *See also* Texas Workers' Compensation Appeal No. 92540, decided November 19, 1992.

The carrier states that it disagrees with Finding of Fact No. 1 and that Conclusion of Law No. 2 is not supported by a preponderance of the evidence. That finding and conclusion are as follows:

> **Finding of Fact No. 1**. The contested case hearing was not conducted within seventy-five (75) miles of the claimant's residence at the time of the injury, but the _____ Field Office of the Workers' Compensation Commission is the closest Field Office of the Workers' Compensation Commission to the Claimant's residence.
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> **Conclusion of Law No. 2**. Venue is proper in the _____ Field Office pursuant to Art. 8308-6.03.

Article 8308-6.03 provides that unless the Commission determines that good cause exists for the selection of a different location, a BRC or a contested case hearing

may not be conducted at a site more than 75 miles from the claimant's residence at the time of injury. At the hearing the hearing officer asked the claimant if at the time of injury she lived within 75 miles of "this building" to which the claimant said she did not, but the claimant then said that it was the closest workers' compensation office. The hearing officer then asked the carrier's representative if he agreed "with that" to which he replied in the affirmative. Neither party objected to the hearing being held at the field office where it was held. On appeal, the carrier requests that we determine whether the venue for the hearing was proper in the field office where the hearing was held under Article 8308-6.03. Since neither party raised an issue concerning venue at the hearing, we conclude that the hearing officer's implied finding of good cause for holding the hearing at the closest Commission office to the claimant's residence at the time of her injury was acquiesced to by the parties and that the carrier should not now be heard to complain of or question the venue for the hearing on appeal. *See* Texas Workers' Compensation Commission Appeal No. 91049, decided November 8, 1991, and Texas Workers' Compensation Commission Appeal No. 91041, decided December 17, 1991. We note that Article 8308-6.03 does not require that a hearing be held at a Commission field office, but refers simply to a "site."

Finally, the carrier contests the following findings of fact on the ground that the hearing officer erred in finding in her Order on Carrier's Motion For Consideration of Additional Issues that there was no good cause for adding to the issues to be resolved at the hearing the issue of whether the claimant's carpal tunnel syndrome was an injury occurring with the course and scope of her employment on or about _____:

> **Finding of Fact No. 4**. The carrier accepted liability for the claimant's bilateral carpal tunnel injury of _____, and has paid and is currently paying income benefits to the claimant; the carrier has paid medical benefits attendant to the injury.
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> **Finding of Fact No. 5**. The claimant's injury of _____, includes impingement of her left shoulder which also arose out of the claimant's duties as a curtain pleater for the employer; the carrier has not contested the subsuming of the left shoulder impingement into the claimant's bilateral carpal tunnel injury within sixty (60) days of June 24, 1992, the latest possible date the carrier could state that it first became aware of the left shoulder impingement.

The BRC in this case was held on June 6, 1992. According to the BRC report which was sent to the parties on June 18, 1992, the only issues that were raised but not resolved at the BRC were whether the claimant's problems with her back and hip are related to her _____ injury, and whether treatment for choking is related to the _____

injury. In a letter to the hearing officer dated July 9, 1992, which was received by the Commission on July 13, 1992, the carrier requested a hearing to discuss the addition of an issue to be resolved at the hearing which it acknowledged was not discussed at the BRC. That issue was whether the claimant's carpal tunnel syndrome was an injury occurring within the course and scope of her employment on or about _____. The carrier stated in its request that as good cause for the additional issue, it would show that the claimant only worked as a pleater for the employer for two days before complaining of pain in her hands and being diagnosed as having carpal tunnel syndrome. The carrier further stated that it intended to present evidence at the contested case hearing "regarding the possibility of a causal relationship between the claimant's work activities at [the employer] and her carpal tunnel syndrome." In her order dated July 28, 1992, the hearing officer stated that it appeared that there is no showing of good cause as the carrier did not contest compensability of the injury within 60 days, and denied the carrier's request.

Article 8308-5.21 provides in part that if the insurance carrier does not contest the compensability of the injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability, and further provides that an insurance carrier shall be allowed to reopen the issue of compensability if there is a finding of evidence that could not have been reasonably discovered earlier. Tex. Workers' Comp. Comm'n, 28 TEX. ADMIN. CODE §142.7 (Rule 142.7) provides that the statement of disputes for a hearing held after a BRC includes:

(1) the benefit review officer's report, identifying the disputes remaining unresolved at the close of the BRC;

(2) the parties responses, if any;

(3) additional disputes by unanimous consent, as provided by subsection (c) of this section; and

(4) additional disputes presented by a party, as provided by subsections (d) and (e) of this section, if the hearing officer determines that the penalty (sic) has good cause.

Subsection (d) of Rule 142.7 concerns additional disputes by unanimous consent which is not relevant to the issue at hand since there was not unanimous consent to add the issue requested by the carrier. Subsection (e) of Rule 142.7 provides in part as follows:

Additional disputes by permission of the hearing officer. A party may request the hearing officer to include in the statement of disputes one or more disputes not identified as unresolved in the benefit review officer's report. The hearing officer will allow amendment only on a determination of good cause.

Subsection (e)(3) further provides that the hearing officer will rule on the request, and notify the parties of the ruling.

We first observe that the carrier was attempting in its request to add an issue that was not identified as unresolved at the benefit review conference and that the addition of such issue was not by unanimous consent. Consequently, subsection (e) of Rule 142.7 would apply to its request thereby placing on the carrier the burden of showing good cause for the addition of the issue to the statement of disputes. Subsection (c) of Rule 142.7 would not apply to the carrier's request because that subsection concerns a party's response to the disputes identified as unresolved in the benefit review officer's report. The compensability of the claimant's carpal tunnel syndrome was not identified in the benefit review officer's report as being an unresolved dispute.

We next observe that under Article 8308-5.21 the carrier is allowed to reopen the issue of compensability if there is a finding of evidence that could not have been reasonably discovered earlier. Reading Article 8308-5.21 in conjunction with the good cause requirement in Rule 142.7(e), we cannot conclude that the hearing officer erred in finding that the carrier did not have good cause for including the issue of the compensability of the claimant's carpal tunnel injury in the statement of disputes inasmuch as the only reason given by the carrier relating to good cause is that the claimant worked for the employer for only a few days. That evidence could certainly have been discovered by the carrier within 60 days of its notice of injury and certainly well before its request of July 1992, which was eleven months after the date of injury. We note that the employer's first report of injury, which was put into evidence by the carrier, is dated September 13, 1991.

We next observe that Rule 142.7(e) does not require that the hearing officer hold a hearing on the issue of good cause for allowing the addition of a dispute not identified as unresolved in the benefit review officer's report, particularly under the circumstances of this case where the request to add an issue indicated a lack of merit on its face. We further observe that the carrier did not object at the hearing to the issues framed by the hearing officer for resolution at the hearing, did not reurge its request to add an issue, and made no attempt at the hearing to demonstrate good cause for adding its requested issue. And finally, we note that the issue that the carrier requested to be added to the statement of disputes related only to the compensability of the claimant's carpal tunnel injury. The carrier did not include in its request that an issue relating to the

compensability of the claimant's left shoulder impingement be added to the statement of disputes. According to the evidence and the findings of fact, it was the left shoulder impingement that the therapist was working on when the claimant experienced her hip injury. We conclude that the hearing officer did not err in not adding the carrier's requested issue to the statement of disputes, and that in any event, it would not effect the outcome under the circumstances in this case in that the medical treatment causing the hip and back injury was for the left shoulder impingement injury, the compensability of which the carrier did not request to be added as an issue at the hearing.

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge