APPEAL NO. 92573

On September 9, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer determined that the claimant was entitled to medical and temporary income benefits (TIBs) with TIBs to continue until claimant's disability ceased or claimant reaches MMI. (carrier) appeals by disagreeing with the hearing officer's Findings of Fact No. 3, No. 4, No. 6, and Conclusions of Law No. 2 and No. 3. Claimant files a response asking the Appeals Panel to affirm the hearing officer. The case is decided pursuant to Texas Workers' Compensation Act, TEX. REV. CIV. STAT. Ann. art. 8308-1.01 *et seq*. (Vernon Supp. 1991) (1989 Act).

DECISION

We do not find merit in the contentions urged by the carrier. The evidence being sufficient to support the findings and conclusions of the hearing officer, the decision is affirmed.

Claimant is a 53-year-old woman employed as an assembly line worker for (employer). The claimant has had back problems for a number of years and received approximately two weeks workers' compensation benefits for a 1986 back injury. The claimant's testimony was that on (date of injury) while operating a "depalletizer," she injured her back attempting to pull a pallet and/or skid from the line. Claimant testified she reported her injury to her immediate supervisor, (Ms. M) (last name unknown). Claimant further testified she thought she had just pulled a muscle and intended to keep working. After an hour or two the pain became so severe claimant told (Ms. M), the supervisor, that she had to go to the doctor. Claimant sought treatment later that day from her chiropractor, (Dr. S), who had treated claimant in the past for back pain. Claimant returned to work the next day, (date), and according to required company policy submitted a doctor's excuse to (Ms. M). Claimant continued work fairly regularly and continued to receive treatment from (Dr. S) until February 23, 1992. Claimant testified on the morning of February 24, 1992 her "back quit" and she was barely able to get out of bed. Claimant called the employer's "girl in the crib", who took messages when the office was closed, and reported her back hurt so much she couldn't come to work. Claimant was referred to (Dr. C), M.D. who gave claimant medications. Claimant was subsequently seen by (Dr. L), M.D. who ordered a CAT Scan. (Dr. C), by medical report of February 24, 1992 indicates claimant had an acute back strain with muscle spasms and tenderness on the right hip with radiation to the right thigh. The CAT Scan of the lumbrosacral spine shows bulging of the disc at L3-4 and L4-5. Claimant has been unable to work since February 23, 1992.

Claimant testified she talked to (Ms. E), employer's personnel officer, about filing a claim. There is a dispute regarding what (Ms. E) told claimant. Claimant testified (Ms. E) told claimant that she was entitled to benefits under either workers' compensation or the union disability plan and the union plan would probably be better for claimant. (Ms. E) denies this conversation. In any event, (Ms. E) sent claimant a union disability claim form. Claimant completed and mailed the union disability form back to the employer on February 29, 1992. The claimant subsequently learned the union was disallowing her claim because

it was work-related. Claimant then filed for workers' compensation benefits on March 30, 1992. There is also some testimony that claimant discussed her injury with (Mr. T), one of employer's supervisory personnel.

The issues framed at the contested case hearing were:

1.Whether or not CLAIMANT suffered an injury within the course and scope of her employment on 02-23-92.

2.Whether or not CLAIMANT gave notice of her injury to Employer not later than the 30th day after such injury.

During the course of the hearing it became clear that claimant thought the date of injury meant the day claimant began missing work. The hearing officer found in part:

FINDINGS OF FACT

3.On (date of injury) CLAIMANT injured her back when she attempted to pull a pallet and again immediately thereafter when she pulled out a skid at her work station at EMPLOYER's plant in (city), Texas.

4.On (date of injury), soon after suffering the injury to her back, CLAIMANT told her immediate supervisor, (Ms. M), that she had injured her back while attempting to pull out a pallet at her work station.

6.CLAIMANT has been unable to work since 02-23-92 due to her injury of (date of injury).

CONCLUSIONS OF LAW

2.CLAIMANT suffered a compensable injury to her back on (date of injury) while acting within the course and scope of her employment with EMPLOYER.

3.CLAIMANT notified EMPLOYER of her on-the-job injury of (date of injury) not later than the 30th day after the date of such injury.

Carrier disagrees with Findings of Fact Nos. 3 and 6 and asserts "the hearing officer had no authority under the law to find an injury on (date of injury)." For Finding of Fact No. 4 the carrier adds that the hearing officer had no authority under the law to find notice "regarding a (date of injury) injury." Similar language is used in disagreeing with Conclusions of Law Nos. 2 and 3. Carrier is asserting that the hearing officer cannot find a date of injury "which has not been asserted by the claimant. . . ." Carrier is relying in its argument on the fact that claimant's workers' compensation claim lists the date of injury on

or about 02-23-92.

The hearing officer found, supported by sufficient evidence, that the employer had actual notice of the (date of injury) incident when claimant told her supervisor of the injury and of the February 23, 1992 incident where claimant was unable to get out of bed and began losing time from work. The evidence was sufficient for the hearing officer to conclude that the injury occurred on (date of injury). We held in Texas Workers' Compensation Commission Appeal No. 91097, decided January 16, 1992, citing Select Insurance Co. v. Patton, 506 S.W.2d 677 (Tex. App.-Amarillo 1974, writ ref'd n.r.e.) where a first notice of claim gave an inaccurate date of injury and that no contention was made at the hearing that the notice provided insufficient information on which to investigate the injury that "[t]he hearing officer was correct in evaluating all the evidence of record to determine whether an error had been made on a notice of injury; the record supports his decision." The evidence in this case clearly supported the findings and conclusions of the hearing officer that claimant suffered an injury on (date of injury), reported it to her supervisor, kept her supervisor informed of her medical progress and informed the employer when she was no longer able to work.

We have further held in Texas Workers' Compensation Appeal No. 91123, decided February 7, 1992, in a similar fact situation where the claimant/respondent testified "I didn't realize it (her back) was hurt until I just couldn't stand it no more", that pleadings, as such, are not required by the 1989 Act. *Also see* Texas Workers' Compensation Commission Appeal No. 92022, decided March 9, 1992. In this case, carrier was advised at the benefit review conference (BRC) that the actual date of the injury was (date of injury). This was specifically found by the hearing officer in his Finding of Fact No. 7. The carrier has not been misled or prejudiced by the date on the Notice of Injury form filed by the claimant. Furthermore, as found by the hearing officer, the issue was raised at the BRC as an unresolved issue and, consequently, Rule 142.7 does not apply. Carrier's argument that the hearing officer had no authority to find a (date of injury) date of injury is without merit.

The decision of the hearing officer is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge