APPEAL NOS. 92654 & 92655

A contested case hearing was held on October 13 and November 3, 1992 at (city) Texas, (hearing officer) presiding as hearing officer. He determined that on (date of injury 1), the respondent (claimant) sustained a work-related injury as the result of the repetitive contact with harsh cleaning agents and water in her duties with employer and that she did not sustain a new injury on (date of injury 2). He determined that appellant (Carrier 1) was the carrier responsible for benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art 8308-1.01 (Vernon Supp. 1993) (1989 Act). Carrier 1 appeals the decision of the hearing officer arguing: (1) that the hearing officer erred in determining the claimant is entitled to temporary income benefits (TIBS) because maximum medical improvement (MMI) had already been certified, and (2) that a new compensable injury, through the aggravation of the (date of injury 1) injury, occurred on (date of injury 2), and that it, Carrier 1, was not the carrier for the employer at that time. No response has been filed by the claimant. Respondent (Carrier 2) filed a response requesting that the decision be affirmed and denying error on the part of the hearing officer.

DECISION

Finding the evidence sufficient to support the determinations of the hearing officer and a correct application of the law to those facts, we affirm.

This case initially appeared to involve two distinct claims and was filed under two distinct claim numbers. Although a single contested case hearing was held to resolve what became a single issue, two appeal numbers have been assigned to correspond to the original claim numbers. However, the case is resolved in this single opinion.

The parties agreed that the issue at the contested case hearing was whether the claimant sustained an injury in the course and scope of her employment on (date of injury 2). The parties stipulated that: (1) on both (date of injury 1), and (date of injury 2), the claimant was an employee of the employer, (2) on (date of injury 1), the workers' compensation carrier for the employer was Carrier 1, (3) on (date of injury 2), the workers' compensation carrier for the employer was Carrier 2, and (4) claimant sustained a work-related injury while working for the employer on (date of injury 1). The crux of the case concerns whether the claimant's condition on (date of injury 2), which again resulted in her being unable to work, was an aggravation of a previous injury and a distinct compensable injury or if her condition was merely an extension or continuation of her original injury of (date of injury 1).

Claimant worked for employer for almost 10 years and performed duties which required the frequent and repeated use of harsh chemical cleaning materials and submersion of her hands and arms in water. On (date of injury 1), the claimant went to her doctor, (Dr. B), who noted in medical records that her hands were inflamed and that both hands "have blisters and are swollen" and that the claimant indicated the condition had existed for two months. His diagnosis was dermatitis and cellulitis. The claimant was

taken off work, a workers' compensation claim filed and benefits paid by Carrier 1. Dr. B examined the claimant on August 1st, noted that the dermatitis was doing well and released the claimant to return to work on August 5th.

The claimant testified that Dr. B told her that the problems she was having were caused by the various chemicals she used in her work. She stated that the reason she went back to work was because she had to, that she had no choice, but that her hands never healed between (date of injury 1), and (date of injury 2). She testified that she had burns on her hands ever since (date of injury 1), that they never healed, and that they had gotten worse to the point that she had open sores which sometimes bled requiring her to go back to Dr. B on (date of injury 2). She stated she had also gone to Dr. B in January 1992 because her hands had never completely healed. She indicated that Dr. B had prescribed that she wear two sets of gloves on the job and that she had basically done so but that she still could not completely avoid getting her hands wet and coming into contact with chemicals.

When the claimant went to Dr. B on (date of injury 2), the records indicate that she had a rash on both hands and a few spots on both arms, that it was really hurting her, and that she could not sleep at night. Dr. B took her off work for two weeks and when she returned he referred her to a dermatologist who diagnosed eczema and localized dermatitis. Claimant thereafter saw two other dermatologists and remained off work. She said she lost her job with the employer when she exhausted all her sick leave. She testified that she was not aware that her doctor had ever submitted any kind of notice of MMI.

The medical records offered by the claimant generally support her testimony. Also in the packet of medical records is a Report of Medical Evaluation, Texas Workers' Compensation Form 69 (TWCC-69) signed by Dr. B setting out that "both hands have blisters on them, they are red, swollen" and that "[c]ondition of hands began about 2 months ago (5-8-91)." The form indicates that the employee reached MMI on "7-19-91" and does not indicate a percentage of whole body impairment rating. However, another TWCC-69 in the file dated "7-28-92" and signed by a (Dr. P) indicates that the employee has not reached MMI. Also in this packet is a letter from Dr. B to an insurance company dated August 6, 1992 which states:

> (Claimant) was first seen at this clinic on 7-8-91. The diagnosis on this date was dermatitis and cellulitis of the hands. She stated that she had this condition for about 2 months (approximate date 5-8-91). She returned for the same condition on 7-19-91 and 8-1-91.
>
> (Claimant) did not return until 1-6-92 for the same condition again. The dermatitis that (claimant) had is a repetitive condition.
>
> At the present time, (claimant) is being seen bi-weekly. Her hands seem to be improving, but I have not released her to return to work.

Also included in the records offered by the claimant is a letter to Dr. B from Carrier 2 dated March 31, 1992, indicating that claimant had filed a claim with Carrier 2. In the letter, Dr. B is asked if the present symptoms are due to a continuation of the claimant's previous injury or if the claimant "has suffered an aggravation." Dr. B wrote on the letter: "the symptoms are due to a continuation of her previous injuries."

Based upon the evidence before him, the hearing officer determined that the claimant returned to work in August because she needed to work and not as a result of the lack of any need to continue medical treatment. He also determined that she continued to manifest symptoms associated with her earlier injury from (date of injury 1) through at least (date of injury 2) and that she sustained no new injury on (date of injury 2), but rather, continued to manifest symptoms relating to her earlier injury. As indicated, we believe there is sufficient evidence of record to support these determinations. While we generally agree with the assertion on appeal by Carrier 1 that as a matter of law a compensable injury embraces an aggravation of a previously existing condition or injury, whether the claimant sustained such an aggravation or merely suffered a continuation of an original injury is a question of fact for the fact finder. Texas Workers' Compensation Commission Appeal No. 92463, decided October 14, 1992. In that case we upheld the hearing officer's determination that a new injury (aggravation of a preexisting knee injury) was not sustained some three and a half months after the original injury; rather, it was a continuation of the earlier knee problem. *See also* Panola Junior College v. Estate of Thompson, 727 S.W.2d 677 (Tex. App.-Texarkana 1987 (writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 92565, decided December 7, 1992; Texas Workers' Compensation Commission Appeal No. 92518, decided November 16, 1992.

Carrier 1 also urges that the claimant reached MMI on July 19, 1991 according to the form signed by Dr. B, that this was not properly disputed and cannot now be disputed, and that therefore, the claimant cannot be entitled to TIBS under the 1989 Act since MMI has been reached. *See* Article 8308-4.23(a). Accordingly, Carrier 1 urges reversal of that portion of the hearing officer's decision awarding any further TIBS.

We observe that the hearing officer's order provides that benefits are payable until the claimant reaches MMI or no longer has disability. Because these eligibility issues were not before the hearing officer, his order, as written, does not prevent the carrier from raising the issue presupposing such issue has not been previously adjudicated, through future dispute resolution proceedings, whether the claimant has, or has not, reached MMI. We do not read the hearing officer's decision, as appellant apparently has, to state that TIBs can be resumed after a claimant has reached MMI. Therefore, we do not agree that there is reason to disturb the order.

Under the issue before the hearing officer, the TWCC-69 form from Dr. B went only to the question of whether there was a distinct new injury on (date of injury 2), rather than a continuation of the first injury of (date of injury 1). From the overall context of the evidence

and the hearing officer's decision, it could be argued that he was not convinced that MMI was reached on July 19, 1991; however, that issue was not before him and was not developed in this record.

Parenthetically, we have repeatedly emphasized the importance of a certification of MMI (Texas Workers' Compensation Commission Appeal No. 92363, decided September 9, 1992; Texas Workers' Compensation Commission Appeal No. 92027, decided March 27, 1992). We have also recognized that there will be situations where even a designated doctor, whose certification is given presumptive weight, can properly amend or modify his MMI certification. Texas Workers' Compensation Commission Appeal No. 92441 decided October 8, 1992. Our decisions have also held that a claimant can dispute a treating doctor's determination of MMI. Texas Workers' Compensation Commission Appeal No. 92392, decided September 21, 1992. Of course, a claimant is not able to dispute a determination of MMI if he is unaware, as is asserted here, that any such determination has been made. However, as indicated above, an issue of MMI was not before this contested case hearing and the matter was not developed in the record.

In determining the issue before him, the hearing officer was free to weigh all the evidence including all the medical records, the testimony of the claimant and Dr. B's statement that the claimant's condition was a repetitive, continuing one. As the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence (Article 8308-6.34(e)), he could appropriately resolve any conflicts or inconsistencies brought out in the evidence. Ashcraft v. United Supermarkets, Inc., 578 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). Where there is sufficient evidence to support the determinations of the fact finder, which there is here, there is no sound basis to disturb his decision. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986).

The decision and order of the hearing officer is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge