

APPEAL NO. 93198

Under the provisions of the Texas Workers's Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held on January 13, 1993 (with the record being held open until February 19, 1993) in (city), (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) sustained injury to her back and internal injuries including spastic colitis, abdominal and liver injury, in addition to rib injuries while in the course and scope of her employment on (date of injury) and that the appellant (carrier) did not properly contest the compensability of back and internal injuries including spastic colitis, abdominal and liver injury. Carrier urges error in the hearing officer's determination that it had not timely contested the compensability of these latter injuries and had lost the right to contest compensability under Article 8308-5.21 of the 1989 Act and claims there is no evidence to support compensability for the back, colon and liver problems. Claimant supports the hearing officer's determinations and asks that the decision be affirmed.

DECISION

Finding sufficient evidence to support the hearing officer's determination that the carrier failed to timely contest the compensability of back and internal injuries, we affirm.

The fact of a compensable injury being sustained by the claimant on (date of injury) and the initiation of benefits was not in dispute. The issues before the hearing officer were whether the carrier properly contested compensability of back and internal injuries including spastic colitis, abdominal and liver injury and whether the claimant sustained those injuries in addition to rib injuries on (date of injury). The claimant was injured when she was thrown from a horse in the course and scope of her employment. She has not worked since. Although she did not go to the doctor immediately, she did approximately one week later and was determined to have some cracked ribs and was referred for more tests. She was experiencing swelling in her abdomen "all around the middle." She testified that she did not injure herself in any other way after the accident of (date of injury). She indicated that she was referred to other doctors and a blockage in her colon and a liver problem (possible hepatic hematoma) was found. She stated that about the 1st of June she called the carrier's adjusting agent to advise him of the internal injuries. The claimant also testified that she had back pain and that she saw a doctor on May 22nd about her back problem and was told she had a slipped vertebra. She stated that later in June she called the adjusting agent about the back problem and that she told him she was scared to have surgery. She testified that she only drank alcohol moderately and that she was told by her doctor to refrain once the liver problem was found.

A (Mr. F) testified for the carrier and stated the claim file was referred to him on September 28, 1992 and indicated there were "many medical bills disputed." (Although not clear, we surmise that he was likely referring to disputes involving payment of health care providers as set forth in Article 8308-4.68). In any event, after he reviewed the file he filed a controversion of any injury, other than the broken ribs, on October 5, 1992. Mr. F could

not provide any meaningful information on the prior adjuster's handling of the file and stated he did not have the prior adjuster's telephone log or all his notes.

There was considerable medical evidence, including medical authority and treatises, concerning the potential causes of spastic colitis and liver injuries. There were also doctor's reports concerning the claimant's lumbar problems, including conclusions of subluxation of L4 and L5 and changes of moderate to severe facet joint arthropathy. Clearly, there were conflicts in the medical evidence for the resolution of the hearing officer. Article 8308-6.34(e)&(g).

We find that there was sufficient evidence of record to support the hearing officer's determination that the carrier was notified and aware of the claimant's claimed additional back and internal injuries assertedly flowing from the accident of (date of injury), and that such notification and awareness was well before the expiration of the 60 days for contesting compensability as set forth in Article 8308-5.21. The claimant's un rebutted testimony is that she made a number of calls to the carrier's then adjuster and informed him of the additional internal and back injuries related to the accident. We have not held that notification of a claimed injury (it is apparent the original rib injury from the February 14th accident was appropriately conveyed to the carrier) must be in writing. See generally Texas Workers' Compensation Commission Appeal No. 93120, decided April 2, 1993. That a carrier has adequate notice of the injury is crucial. The carrier's main thrust was not to claim they had no notice; but rather that they were not estopped from contesting the compensability of the additional injuries even though outside the 60 day time frame because Article 8308-5.21 was not applicable since compensation (at least for the broken ribs) had been initiated within the 60 days. Article 8308-5.21 talks of contesting "compensability" of the injury, and Article 8308-1.03(11) defines compensation to include medical benefits. Although it appears that temporary income benefits (TIBs) were being paid as a result of the accident, it is also apparent that medical benefits were being contested (and presumably not paid) regarding the additional back and internal injuries. We cannot read Article 8308-5.21 to provide that a carrier need not contest such additional or follow-on injuries within 60 days once on notice of such injuries and that it can contest the compensability of such additional or follow-on injuries at any time into the indefinite future. We note in this regard that under Article 8308-4.68, a carrier is given 45 days to dispute a medical bill and that Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 133.304 (TWCC Rule 133.304) ties in as one reason for a medical payment dispute the contest of the compensability of the claim. The 45-day rule would not seem to be in harmony if the contest of compensability of the injury in issue could be asserted at just any time in the future. We have previously held it error for a hearing officer not to address and make appropriate findings concerning the timeliness of a carrier's contest of compensability of a neck injury which manifested itself some 10 months after an original lumbar injury which had not been contested and for which benefits were being paid. Texas Workers' Compensation Commission Appeal No. 92437, decided September 28, 1992.

We believe that Appeal No. 92437 is dispositive of the issue before us and, further, that there was sufficient evidence to support the hearing officer's determination that the carrier did not properly contest compensability of the back and internal injuries. Our affirmance on this issue renders moot the issue of whether the claimant, on (date of injury), sustained a compensable injury to her back and internal injuries. However, while the medical authorities and evidence advanced by the parties were certainly in conflict, there was probative evidence from which the hearing officer could conclude that the additional back and internal injuries which flowed from the February 14th accident. The hearing officer, as the fact finder, is 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 is responsible for resolving conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Co. of Newark, N. J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and unless his decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, there is no sound basis to disturb it. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. The decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge