APPEAL NO. 93524

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). On June 4, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding. The issues left unresolved from the benefit review conference (BRC), announced and agreed upon at the CCH were: 1) were the claimant's teeth injured in the course and scope of his employment; 2) did the claimant notify his employer of the injury in a timely manner; and 3) did carrier waive its right to contest compensability under § 5.21(a) of the Act. The hearing officer determined that claimant's teeth were injured in the course and scope of his employment and that claimant timely notified his employer of the injury. The hearing officer made no findings or conclusions on the third issue.

Appellant, carrier herein, contends the hearing officer's findings and conclusions were "clearly erroneous" and that the hearing officer's decision regarding medical benefits was improper. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. Respondent, claimant herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

Initially we note that one of the unresolved issues from the BRC, announced and agreed upon by the parties at the CCH, was whether carrier waived its right to contest compensability under Article 8308-5.21(a). Evidence was presented on this point and both parties litigated and argued the issue at the CCH. The hearing officer failed to list this as an issue or make any findings or conclusions or otherwise reference the issue in his decision. In that the hearing officer decided the case on its merits, we can infer that he impliedly found for the carrier on that issue, and that the carrier by filing its TWCC-21 (Payment of Compensation or Notice of Refused/Disputed Claim) on November 23, 1992, had timely contested compensability. Carrier in its appeal does not raise this issue, and pursuant to Article 8308-6.42(c) the Appeals Panel will issue decisions only on issues on which review was requested.

Claimant testified he had been employed by employer herein, for over 20 years. He stated that at approximately 11:40 a.m. on (date of injury), while employed in food services, he was in a walk-in refrigerator/freezer attempting to take supplies from a shelf approximately seven feet high. Claimant testified he was reaching above his head to pull a case of frozen orange juice off the shelf when the box slipped and he was hit just above his upper lip (and below his nose) with the case of frozen juice. A coworker, (VS) was in the refrigerator with claimant and witnessed at least part of the accident. Claimant, with VS, sought out their supervisor, (Ms. P) and reported the incident a few minutes after it happened. According to the claimant Ms. P indicated she would complete a report and hold it in the event anything came of the incident. Claimant missed no work as a result of the incident and testified he almost never missed work because of illness. Claimant

testified he began experiencing increasing discomfort in his mouth and on September 16, 1992, saw a dentist, (Dr. S). The examination revealed loose teeth caused in part by trauma and in part by pre-existing periodontal disease. Claimant stated he immediately reported the findings to his new supervisor, (Mr. M), as Ms. P was no longer employed by the employer. Claimant stated Mr. M completed another accident report apparently sometime in latter September 1992. The Employer's First Report of Injury or Illness (TWCC-1) is dated "9-23-92" showing a "05-05-92" date of injury. An Employee's Notice of Injury (TWCC-41) signed by claimant is dated "11-3-92."

The dentist, Dr. S, in a report dated February 4, 1993, notes he examined claimant on September 16, 1992, and found that due to the trauma and "periodontal involvement" the extraction of four teeth was necessary. In a subsequent report dated April 6, 1993, Dr. S states:

> In regard to the denial of this claim because of pre-existing periodontal disease, there is no question that the patient had periodontal problems before the accident. However, the patient claims no pain was present prior to the trauma and there was a huge increase in mobility after the blow. With the lack of mobility, inflammation and pain severely compromised teeth can last a long period of time and not require immediate replacement.
>
> Upon examination, I observed trauma to the upper lip and gingiva that indicated that the patient did indeed receive a blow hard enough to loosen the upper teeth and precipitate an infection and therefore pain.
>
> There was a definite, witnessed, and observed incident of trauma, and even though the teeth were periodontally compromised, I believe this definitely precipitated or surely accelerated the tooth loss.

Carrier referred claimant's records to NADENT, identified as an insurance company dental consulting firm. In an unsigned report dated "3/18/93," the reviewer offers the opinion "no causal relationship of treatment to trauma has been established," and states (based on a record review) "there were no signs of trauma noted." The report concludes:

> It appears that the claimant's teeth would be extremely mobile, untreatable, and requiring extraction regardless of the accident at work due to the severe, advanced state of the periodontal disease. This is documented by the x-ray findings and the fact that the attending dentist recommended root planing to try to save the remaining teeth.

The hearing officer found that while claimant had a pre-existing periodontal problem, the accident precipitated the tooth loss and the pre-existing periodontal problems were not the sole cause of claimant's problems. The hearing officer further found that claimant timely

reported the injury to his supervisor at that time.

Carrier in prefacing its appeal states "[t]he Decision and Order rendered in this case was not forwarded to the attorney for Carrier." Contrary to what the rules may be in the civil courts of this state, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(b) (Rule 102.5(c)), the administrative rules of the Texas Workers' Compensation Commission (Commission) provide that, unless otherwise specified by rule, all notices and communications to insurance carriers will be sent to the carrier's Austin representative as provided in Rule 156.1. Further, Rule 142.16(d) states that the hearing officer's decision shall be furnished to the parties (as opposed to the parties' representatives). We also note that in TWCC Advisory 92-07, dated November 3, 1992, all carrier representatives were advised that documents and notices will be placed in the carrier's Austin representative's box and "No additional copies of such documents will be mailed to Carriers' Representatives who have attended such proceedings." The record reflects that the decision was sent to claimant's employer and carrier's Austin representative as required by Commission rules.

Carrier's first contention of error is that there is "no evidence" that claimant timely reported his injury, relying on the TWCC-1 dated September 23, 1992, and claimant's TWCC-41, dated November 3, 1992. Carrier completely ignores claimant's testimony, as supported by VS as an impartial witness, that claimant reported the injury within minutes of its occurrence to his then supervisor, Ms. P. The fact that the supervisor or management personnel failed to take action on the report does not defeat claimant's report. It is well established that notice of injury need not be in any particular form or manner of notice. DeAnda v. Home Insurance Co., 618 S.W.2d 529 (Tex. 1980); Texas Workers' Compensation Commission Appeal No. 92430, decided October 5, 1992; Texas Workers' Compensation Commission Appeal No. 92086, decided April 13, 1992. Claimant's notice to Ms. P on (date of injury), was sufficient notice. There is sufficient evidence that claimant did give this notice as he testified. Carrier's contention is totally without merit.

Carrier also contends that claimant's injury was not in the course and scope of his employment. What carrier is actually contending is that claimant's present condition is due to his pre-existing periodontal disease. Carrier in support of its position submits the March 18, 1993 report from NADENT. While that report does, in effect, say that claimant's present condition was solely caused by claimant's pre-existing periodontal disease, that opinion is contested by the treating dentist who stated ". . .even though the teeth were periodontally compromised" Dr. S believes the trauma "definitely precipitated or surely accelerated the tooth loss." The mere fact that claimant has a pre-existing disease does not in itself defeat his right to recover. *See* Texas Employers' Insurance Co. v. Page, 553 S.W.2d 98 (Tex. 1977). To defeat a claim because of a pre-existing condition the burden of proof is on the carrier to show that the pre-existing condition is the sole cause of claimant's present incapacity. *See* Page, *supra*, and Texas Workers' Compensation Commission Appeal No. 92483, decided October 26, 1992; Texas Workers' Compensation Commission Appeal No.

92216, decided July 10, 1992. Whether claimant's dental condition was solely caused by his pre-existing periodontal disease becomes a fact issue for the hearing officer to resolve. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. App.-Amarillo 1974, no writ). The hearing officer specifically found that the pre-existing periodontal problems were not the sole cause of claimant's present dental condition. The hearing officer's finding on this point is supported by sufficient evidence in the form of Dr. S's report. Carrier's point on this issue is without merit.

Carrier argues that the hearing officer's order "regarding the payment of medical benefits. . . is erroneous to the extent it requires the Carrier to pay medical benefits which are not reasonable and necessary, and which the Carrier has not had an opportunity to submit to Medical Dispute Resolution." We note that carrier was ordered to pay the "reasonable and necessary cost of treatment of the mouth injury of (date of injury)" by Interlocutory Order dated April 9, 1993. We further note that at the CCH on June 4, 1993 (almost two months later) the hearing officer noted in his decision that "No medical or income benefits have been paid." On the merits of this point, once a determination is made that an injury was compensable, a carrier becomes liable for all health care reasonably required by the nature of the injury, as set forth in Article 8308-4.61. Should a carrier dispute the amount of payment, the medical necessity of the service, or the compliance with medical rules and procedures, those disputes must be raised through the hearing procedures set forth under Article 8308-8.26, and in accordance with Article 8308-4.68 and applicable rules. This benefit dispute resolution process is not the appropriate forum for the carrier to raise issues re garding the reasonableness or necessity of medical or dental care. Contrary to carrier's allegations, the hearing officer's order states "Carrier is ORDERED to pay medical and income benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commission's Rules." The hearing officer's order tracks the language of entitlement to those medical benefits set forth in Article 8308-4.61. The hearing officer did not err and carrier's contention is without merit.

We have reviewed the record and find that the hearing officer's decision was based on sufficient evidence and was not so contrary to the great weight and preponderance of the evidence as to be manifestly wrong or unjust which would require reversal. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Pool v. Ford Motor Co., 751 S.W.2d 629 (Tex. 1986).

Accordingly, the hearing officer's decision is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge