

APPEAL NO. 94312

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). At a contested case hearing held in (city), Texas, on January 25, 1994, the parties stipulated that the respondent (claimant) sustained an injury which arose out of and in the course and scope of her employment with (employer) on (date of injury). The evidence showed that she fell striking her head, face and mouth. The hearing officer, (hearing officer), took evidence on the sole disputed issue, namely, whether the compensable injury of (date of injury), was a producing cause of the claimant's dental problems and left temporomandibular joint (TMJ) meniscal dislocation. The hearing officer made 19 factual findings, 17 of which the appellant (carrier) agrees with, and concluded that claimant sustained a compensable injury which included dental problems with her upper left teeth No. 9 and No. 10 and her left TMJ meniscal dislocation condition. While the carrier concedes that claimant's fall at work did necessitate the replacement of the crown on tooth No. 10 which was loosened in her fall, it asserts that claimant failed to meet her burden of proving that her fall caused the later root canal and apicoectomy procedures on tooth No. 9, the ultimate removal of teeth Nos. 9 and 10 due to an infection process and their replacement with implants, as well as claimant's TMJ condition. Carrier asserts that most of claimant's dental problems were pre-existing, that most of her claimed dental injuries involving teeth Nos. 9 and 10 were not complained of until May 1992, and that her TMJ condition, not complained of until July 1992, was the result of a 1990 motor vehicle accident. The carrier seeks reversal and the rendition of a new decision in its favor. Alternatively, the carrier requests referral of the case to the Medical Review Division of the Texas Workers' Compensation Commission (Commission) for resolution.

In her response, claimant states she agrees with all of the 19 factual findings and two legal conclusions made by the hearing officer but disagrees with his failure to find that her lower teeth problems were part of her compensable injury. Claimant maintained that her lower fixed prosthetic device, which consisted of two lower jaw implants supporting five artificial teeth, was cracked in the fall and that such was a part of her compensable dental injuries.

DECISION

Affirmed.

While the claimant's response to the carrier's appeal was timely filed as a response, it was not timely as an appeal of the hearing officer's failure to find that she sustained a compensable injury to her lower teeth. Accordingly, we will not consider claimant's appeal as such. Section 410.202(a) of the 1989 Act requires that a party file a written request for appeal not later than the 15th day after the date on which the hearing officer's decision is received. See *also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3 (Rule 143.3). Rule 102.5(h) provides that the Commission shall deem the received date of written communications to be five days from the date mailed. Since the hearing officer's decision was distributed to the parties by the Commission on February 24, 1994, according to the Commission's records, claimant is deemed to have received the decision on March 1, 1994,

and thus her appeal, to be timely filed, must have been mailed not later than 15 days thereafter, that is, not later than March 16, 1994. Claimant's response was mailed on March 25, 1994, and thus was untimely as an appeal.

Claimant testified that while at work on (date of injury), she tripped on some cords on the floor behind a counter and fell striking her face on the side of a shelf. She said she was now 40 years of age, that at age 15 she had five lower teeth extracted, that in 1976 or 1977 she had fixed lower dentures installed and all her teeth capped, and that a few weeks before her fall at work, she had oral surgery (vestibuloplasty) on the lower part of her mouth. She said the fall at work tore loose some of the sutures and she sought immediate medical attention from her oral surgeon, (Dr. K). According to Dr. K's notes, claimant had some bleeding in the area of the vestibulopathy and some edema but her suture lines appeared "intact." He saw no fracture and prescribed an ice pack. Later that evening claimant noticed that the crown on her upper left tooth was rotating and the next morning she said she went to (Dr. L), her dentist for treatment other than oral surgery, who tightened the crown. Dr. L's notes indicate that on January 28th and 29th he tightened the tooth attached to an implant in the position of tooth No. 10, and indicated she may have to have it removed and remade.

According to claimant's dental records, on February 2, 1992, Dr. K removed sutures, noted claimant to have some hyperplasia in the area that was "traumatized by the recent fall," and further noted that tooth No. 10 on an implant was still loose surmising it to be a consequence of her fall. On February 10th Dr. K noted that tooth No. 10 had again loosened and said he had the impression the adjacent teeth had shifted. On March 10th Dr. L replaced the crown on tooth No. 10. Claimant testified that in May 1992 she had to have a root canal procedure on tooth No. 9 due to an infection process caused by the loose cap and that, eventually, tooth No. 9 had to be extracted and replaced with a steel implant. She also testified that after she fell, tooth No. 9 was "sensitive" and a little loosened, and that she told Dr. L about it but that he advised her to just "leave it alone." Claimant attributed her ensuing problems with teeth Nos. 9 and 10 to the trauma of her fall. The dental records indicate that Dr. L performed root canal procedures on tooth No. 9 in May and June and that on June 10, 1992, Dr. K performed an "apicoectomy of root canal treated tooth #9."

Claimant testified that she had had a motor vehicle accident in July 1990 after which she experienced TMJ pain and clicking when her jaw opened and closed. She said her treatment included a steroid injection in December 1990 after which her TMJ symptoms resolved. However, claimant said that her TMJ symptoms returned and were even worse after her fall and she attributed such to her (date of injury), fall at work. Dr. K's report of April 26, 1992, stated that claimant's left TMJ problem had "flared a couple of times in the past," but has been almost constant since her fall, that it was giving her a lot of pain, and that she had a severe myospasm in that area and he was concerned she had a dislocation. An MRI report of May 6, 1993, stated the impression of left TMJ meniscal dislocation in the closed position. Dr. K's report of May 19th stated that claimant's left TMJ meniscus dislocation was "probably from her trauma approximately a year ago in which she fell striking her jaw."

Claimant further testified that her lower jaw fixed prosthesis was cracked in the fall and that her vestibuloplasty in that area did not heal correctly as a result of the fall. Dr. L's May 27, 1993, record noted that claimant came in for recementing of a lower anterior bridge. Dr. K's report of November 9, 1993, stated that the January 1992 vestibuloplasty was done to prevent bone loss around her lower implants and that shortly after this surgery claimant "had a bad fall at work striking her upper and lower jaw. She had progressive mobility and deterioration of the maxillary anterior bridges and an exacerbation of the problems associated with the lower implant borne bridge following this fall."

In evidence was a Notice of Medical Payment Dispute form (TWCC-62), with an attached dental consultant report dated July 23, 1993, which indicated that the carrier disputed "any unpaid and/or future dental care re: root canal on tooth #9, extraction and removal of #10 implant and placement of #9 and #10 implants and their crowns." The TWCC-62 further stated that carrier "disputes [TMJ] claim." The report of (Dr. M), dated June 22, 1993, to the carrier stated that while he would approve "a crown for #10 and an attachment," he "would deny the claim for root canal on tooth #9, extraction of tooth #9, removal of #10 implant and placement of #9 and #10 implants and their crowns," as well as the TMJ claim. Dr. M did not feel the latter procedures were related to trauma from claimant's fall at work.

Claimant's dental records further indicated that on September 24, 1992, Dr. K removed the total tooth No. 10 implant and crown which "was injured in a fall." Dr. K's report of November 18, 1992, stated: "Again, this lady took a bad fall at work in January of 1992 and has had mobility and deterioration of the anterior teeth and implants ever since." On December 7, 1992, Dr. K "extracted traumatized tooth #9" and placed implants in the sites of teeth Nos. 9 and 10. Dr. K's note of December 7th stated: "Again, the patient had taken a fall at work last year and traumatized this area of her mouth. We had attempted to salvage tooth #9 but she developed recurrent infections and also the implant in #10 failed and was removed several months ago." Dr. K's November 9, 1993, report stated that implant for No. 10 had been in function for about five years "having little or nor problem until this recent injury." Dr. K further noted that in June 1993, Dr. L inserted a replacement upper bridge over the implants "necessitated by trauma associated with her fall" and that claimant will need to return for some surgical procedures to improve the situation around her lower implants and that she may require arthroscopic surgery for her TMJ meniscus dislocation. In his letter of January 17, 1994, Dr. K stated that claimant's upper restorative dental situation was traumatized during her fall." Dr. K also stated that while her lower implant situation was more complicated, "she fell at a very critical time in the healing of this implant rehabilitation," sutures were pulled loose, and he attempted to repair the tissues that were torn from the fall but scar tissue developed and pulled on the implant and the tissues need to be opened and grafted. Dr. K also said that claimant's previous TMJ condition had "pretty much resolved" until after her fall, and that typically when a person falls and strikes their lower jaw the mandible is forced backwards and a previously compromised meniscus is more likely to dislocate. He feels claimant needs surgery for the TMJ condition.

Claimant testified that at a benefit review conference (BRC), it was suggested that she see (Dr. C) and that she did so and left him with all her records. Claimant stated that Dr. C was an "independent doctor" and asserted that his opinion should be given presumptive weight. In evidence was a Request for Medical Examination Order (TWCC-22) of November 15, 1993, by which the Commission selected Dr. C to examine claimant to determine if her dental implants problems and TMJ condition were caused by her "work injury." Dr. C examined claimant on November 29, 1993, and concluded that he had "no way of telling what caused any of her complications, however, trauma occurring to the patient [sic] mouth as claimed by her and her medical records would surely have a negative impact on any treatment that was in progress or had been previously completed." In a clarifying report of December 31, 1993, Dr. C stated that since Dr. K had treated claimant for about 10 to 12 years, he would be the best judge of her condition prior to her fall; that it seemed likely the fall did cause trauma to the tooth with the loosened crown; that as for her problems with tooth No. 9, "it is possible that this was associated with her initial fall in January of '92, however, I have no way of saying." Dr. C further noted that concerning the anterior mandible situation (apparently referring to the lower fixed prosthesis), because the records show the surgery to have been well healed as of April 2, 1992, and because claimant did not return to Dr. K with complaints in that area until February 10, 1993, Dr. C doubted that "her fall led to the multiple problems that she has had in this area," although he also said the fall may have disrupted the surgery.

Claimant introduced the medical records of (Dr. I), a chiropractor whom she first saw in April 1992 for cervical symptoms and headaches. Dr. I referred claimant to Dr. K in June 1992 for her TMJ condition but apparently treated her neck and headache symptoms until sometime in October 1992. Dr. I opined on July 1, 1992, that claimant's TMJ condition was "due to the fall on her face."

(Dr. G) stated in a November 22, 1993, report that he had evaluated a single implant at "site #23" once in July 1993, that he then had limited information and was unaware it had been subjected to blunt trauma, and that "a traumatic incident to the implant could cause the condition as it was evaluated in July of 1993."

Claimant sought to persuade the hearing officer to determine that all three areas of dental and jaw problems, namely, her upper teeth Nos. 9 and 10, the TMJ condition, and the lower jaw prosthetic device damage, were caused by her fall. Claimant also stated that the carrier paid for the dental work on teeth Nos. 9 and 10 as well as for her lower prosthetic device. Although Dr. I's letter of June 17, 1992, stated that in his opinion claimant's "cervical problems are definitely related to hitting her face when she fell at work," claimant did not seek findings at the hearing that she had also sustained a neck injury. The carrier's position was that only the loosened crown on tooth No. 9 was caused by the fall and that the other problems pre-existed the fall and were not caused by it.

The carrier challenges the findings and conclusions to the effect that claimant's dental problems on and after (date of injury), with her upper left teeth Nos. 9 and 10 and her left TMJ meniscal dislocation were causally connected with her injury on (date of injury), and

that on that date she sustained a compensable injury which included dental problems with teeth Nos. 9 and 10 as well as left TMJ meniscal dislocation. We are satisfied the evidence sufficiently supports the challenged findings and conclusions. The hearing officer is the sole judge of the weight and credibility to be given the evidence (Section 410.165(a)) and, as the finder of fact, resolves conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), including medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We will not disturb the hearing officer's findings unless they are so against the great weight and preponderance of the evidence as to be manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 244 S.W.2d 660 (Tex. 1951).

The hearing officer could believe from the evidence that when claimant fell and struck her face at work on (date of injury), she loosened teeth Nos. 9 and 10 leading to all the subsequent dental work at those sites and that she aggravated her previous left TMJ condition and sustained the meniscal dislocation. The evidence showed that Dr. C was appointed to examine claimant pursuant to Section 408.004 (Required Medical Examinations) and that he was not a designated doctor whose report was entitled to presumptive weight. See Articles 408.122(b) and 408.125(e). Thus, Dr. S's report was but a part of all the medical evidence to be weighed by hearing officer in deciding the causation issues. As for the carrier's alternative request that the Appeals Panel refer the case to the Commission's medical review division for resolution of the issues, we find no authority for such action in the 1989 Act. Rather, Section 410.203(b) provides that an Appeals Panel may affirm the hearing officer's decision, or reverse and render a new decision, or reverse and remand the case to the hearing officer. However, judicial review is provided for in Section 410.251.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge