

APPEAL NO. 94321

On January 18, 1994, a contested case hearing was held in (CITY), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issue at the hearing was whether the appellant (claimant) sustained a neck injury as a result of her injury of (date of injury). The hearing officer decided that the claimant did not sustain an injury to her neck in the course and scope of her employment on (date of injury), and further decided that "[t]he claim for benefits is denied." The claimant disagrees with the hearing officer's decision and requests that we reverse it and render a decision in her favor. The respondent (employer/carrier), who is a self-insured political subdivision of this state, contends that the claimant's appeal was not timely filed and that the evidence supports the hearing officer's decision.

DECISION

We affirm the hearing officer's decision that the claimant did not sustain an injury to her neck in the course and scope of her employment on (date of injury). However, that part of the hearing officer's decision which states that the claim is denied is reformed to reflect that the claimant is not entitled to workers' compensation benefits for her claimed neck injury. The carrier admitted at the hearing that the claimant injured her low back at work on (date of injury), that it never contested the compensability of the low back injury, and that it has paid workers' compensation benefits for the low back injury. Thus, in light of the carrier's acceptance of the compensability of the low back injury, the hearing officer's decision which appears to deny the claimant's entire claim is overly broad and must be restricted to the neck injury, which was the issue before the hearing officer.

Section 410.202 allows a party 15 days from the date of receipt of a hearing officer's decision to appeal the decision. The hearing officer's decision was distributed to the parties on February 16, 1994, with a cover letter dated February 15, 1994. The claimant states she received the hearing officer's decision on February 24, 1994, which made her appeal due by March 11, 1994, and her appeal is date stamped as being received by the Texas Workers' Compensation Commission's San Antonio field office on February 24, 1994. The appeal is addressed to the Appeals Clerk in Austin, Texas. The field office failed to forward the appeal to the Appeals Panel until March 18, 1994. Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(3) (Rule 143.3(a)(3)), provides that an appeal shall be filed with the Commission's central office in Austin not later than the 15th day after receipt of the hearing officer's decision. Notwithstanding the language of Rule 143.3(a)(3), we have held in at least three unpublished decisions that an appeal filed with a Commission field office within the 15-day time period for filing an appeal, is a timely filed appeal even where the appeal does not reach the Commission's central office in Austin until after the 15-day time period has expired. See Texas Workers' Compensation Commission Appeal No. 93597, decided August 18, 1993; Texas Workers' Compensation Commission Appeal No. 93279, decided May 26, 1993; and Texas Workers' Compensation Commission Appeal No. 93153, decided April 15, 1993. Under these circumstances, we find that the claimant's appeal was timely filed with the Commission. We observe that since the hearing officer's decision was

distributed to the parties on February 16, 1994, the claimant's appeal would also be timely under the five-day deemed receipt provision of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)).

On (date of injury), the claimant was working as a custodian for the employer/ carrier when she slipped on a candy wrapper while cleaning the cafeteria and fell to the floor. The claimant testified that she has had back and neck pain since the accident and that she has told all of the doctors who have examined her that she has back and neck pain. The claimant's husband testified that the claimant told him that she told all of the doctors that have examined her that she has back and neck pain. The claimant's husband requested that the claimant be taken from her work place to the hospital in an ambulance on the day of the accident. The ambulance personnel put a neck and back brace on the claimant when transporting her to the hospital. The hospital emergency room report reflects that the claimant denied neck pain and that she was diagnosed as having a back strain and taken off work for two days. The claimant testified that she returned to her regular job about three days after the accident and continued to work for the employer until she was terminated in October 1992. The reason for termination is somewhat unclear. According to the claimant she was terminated for not doing her job.

The claimant began treatment with (Dr. S) on February 24, 1992. Dr. S's reports reflect that the claimant complained to him about low back pain. His reports, which go through June 1992, do not reflect complaints of neck pain. Dr. S diagnosed a lumbosacral strain and prescribed physical therapy which the claimant undertook. (After March 6, 1992, Dr. S also diagnosed a contusion of the right hand which the claimant reported had occurred at work on March 6th.) Dr. S stated that an MRI scan of the lumbar area revealed degenerative changes in the lumbar discs without evidence of herniation.

During his treatment of the claimant, Dr. S referred the claimant to (Dr. H), whose reports reflect that the claimant complained of back pain from her fall of (date of injury) (and wrist pain from the incident of March 6th), but no complaints of neck pain are reported in his reports which go through October 23, 1992. Dr. H opined that the claimant had aggravated her degenerative lumbar spine condition.

After the claimant stopped seeing Dr. H, she went to (Dr. G), a chiropractor, who first saw her on November 19, 1992. In his report of November 19th, Dr. G noted that cervical flexion and extension caused moderate pain. This is the first time neck pain is mentioned in a medical report relating to the injury which occurred nine months earlier on (date of injury). In the November 19th report, Dr. G made no diagnosis in regard to the claimant's neck pain. However, in a Report of Medical Evaluation (TWCC-69) dated September 28, 1993, Dr. G reported, among other things, that the claimant has impairment from loss of range of motion of the cervical spine and from neurological deficits of the cervical spine.

During his treatment of the claimant, Dr. G referred the claimant to (Dr. E) who initially examined the claimant on April 12, 1993, for complaints of neck and back pain. Dr. E noted that x-rays showed a narrowing of three cervical discs with anterior spur formation and a

posterior osteophyte present. Dr. E stated that the claimant was experiencing cervical myelopathy and recommended epidural injections.

(Dr. V), who examined the claimant on June 7, 1993, at the request of the carrier, diagnosed chronic low back pain with three levels of degenerative disc disease. He does not mention complaints of neck pain or a neck injury.

Finally, at the request of the Commission, the claimant was examined by (Dr. HA) on September 9, 1993. Dr. HA diagnosed cervical and lumbar myofascial pain syndrome without evidence of neurological deficit related to the (date of injury), injury, and mild degenerative cervical and lumbar disc disease. Dr. HA also reported that the claimant had not reached maximum medical improvement.

The issue before the hearing officer was whether the claimant's neck injury resulted from her injury of (date of injury). The hearing officer determined that it did not. It has been held that the immediate effects of an original injury are not fully determinative of the nature and extent of the compensable injury. Texas Employers' Insurance Association v. Thorn, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ). However, whether the claimant sustained an injury to her neck in her accident of (date of injury) was a fact question to be determined by the hearing officer who judges the weight and credibility of the evidence and who determines what facts have been established from the conflicting evidence. Texas Workers' Compensation Commission Appeal No. 94105, decided March 7, 1994; Section 410.165(a). Having reviewed the record, we conclude that the hearing officer's finding that the claimant did not injure her neck on (date of injury), is supported by sufficient evidence and is not against the great weight and preponderance of the evidence. See Appeal No. 94105, *supra*.

In regard to that portion of the hearing officer's decision which states that the claim for benefits is denied, we note that the carrier admitted at the hearing that the claimant injured her low back at work on (date of injury), that it had never contested the compensability of the low back injury, and that it had paid workers' compensation benefits for the low back injury. The carrier's position was that the neck injury was not related to the (date of injury) injury. Thus, we conclude that that portion of the hearing officer's decision which denies the claimant's claim for workers' compensation benefits is too broad under the circumstances presented and that it should be reformed, and is reformed, to reflect that the claimant is not entitled to workers' compensation benefits for

her neck injury as the neck injury is not a work-related injury. As reformed, the hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge