

APPEAL NO. 950065  
FILED FEBRUARY 23, 1995

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001, *et seq.* (1989 Act). On December 6, 1994, a contested case hearing was held. The hearing officer determined that respondent's (claimant) compensable injury included her wrists and back, that maximum medical improvement (MMI) was reached on July 26, 1994, with 12% impairment rating (IR). In addition, claimant had disability from July 18, 1992, through November 11, 1993. Appellant (carrier) asserts that findings and conclusions as to the wrists and back are against the great weight and preponderance of the evidence and that evidence it offered was erroneously excluded. It also asserts that disability ended in August 1993. Claimant replied that the hearing officer should be upheld.

DECISION

Reversed and remanded.

Claimant worked as a DeBurr operator for approximately two and one-half years for (employer). As she arose from her chair on \_\_\_\_\_, at work, she tripped over an air hose and fell forward on her elbows, hands, and knees to a concrete floor. There is no dispute as to elbow and knee injury. Carrier disputes that claimant's wrists and back were injured in the fall. Claimant testified that her elbows were broken. Her right arm was placed in a cast and her left in a sling. She said she kept the sling on the left longer than the cast on the right, with the evidence indicating anywhere from six weeks to three months in one or the other.

Claimant stated that when taken to the hospital, she reported that her elbows hurt the most, but her back also hurt. She added that when she first saw her treating doctor, (Dr. G), on July 30, 1992, he told her that her back hurt because of her weight (claimant's weight on the date of injury was not shown, but Carrier's Exhibit D, a report of (Dr. S) indicates in January 1993, claimant was 5'7" tall and weighed 280 pounds). She added that her back pain began "right after I fell." Dr. G does not note a back complaint until May 1993 in any record in evidence. However, claimant's reference to discussions with Dr. G about her back and his attribution of a weight problem are not inconsistent with claimant's statement at the hearing that she has lost 125 pounds and still has back pain. Similarly, Dr. Y, in his examination of April 11, 1994, notes claimant as weighing 210 pounds.

As to the wrists injury, claimant could not be as specific. When asked how soon she noticed pain in her wrists, claimant said, "the wrists started going -- that was months. After they took the cast off they were aching and then my fingers started going numb. But I can't tell you specifically how long it was." When asked when wrist pain was noticed in relation to the cast being removed, claimant said, "I can't specifically tell you. It had to be

weeks maybe months because the elbows were always aching. There was always, you know, the achy feeling on my elbow and in my forearm and I kept telling him. And to me that -- this is all included together." She added that her fingers became numb while her wrist ached. In answering questions about the fall, claimant said she fell straight forward. The hearing officer noted in the record that claimant had her arms outstretched forward with her elbows fully extended. Immediately thereafter, though, claimant stated that her elbows hit first and then her hands.

In regard to activities after the injury, claimant testified that after her arms came out of the cast and sling, her mother came and stayed. The mother and husband did "just about everything." While claimant now works, she does not type, but only greets people, talks on the phone, and translates.

While claimant consistently referred to her back pain as beginning immediately after the fall, she did not indicate such prompt onset in regard to injury to the wrists. Dr. G specifically noted, in his report of her first visit (offered into evidence by carrier) that she had "no tenderness in wrists bilaterally." This observation does not appear to be inconsistent with claimant's own testimony, however, of when wrist pain began--after the cast was removed. In (month) 1993, approximately six months after the date of injury, claimant saw Dr. S, who noted injury to her knees. He then wrote, "she also states, that she fractured both the left and right elbows, and hurt both the left and right wrists." Dr. S apparently was looking at knee injuries and did not provide more detail as to the wrists.

Medical evidence provided by claimant as to either injury to the wrists or the back was limited. Claimant's Exhibit No. 5 was an October 1994, "To Whom It May Concern" letter by Dr. G which said, "it is certainly possible that the direct fall on the hand led to the onset of symptoms of carpal tunnel syndrome (CTS) and that with repetitive use of the hand this has continued to be aggravated." Problems with that statement include that it only says that the fall "possibly" caused the wrist problem, without stating whether there is one or a multitude of other possibilities as to cause and whether any one is more consistent with the circumstances described by the evidence, that it says claimant directly fell on her hand when she testified that she fell on her elbows and then the hands, and that no description of the repetitive use aggravation was provided, which may be considered with claimant's absence of testimony as to repetitive use. Other than those points, Dr. G does provide some opinion evidence as to the cause of claimant's wrist problems.

Claimant did testify that Dr. G sent her to (Dr. D) for her wrist problems and that Dr. D told her that she had CTS from the fall. Claimant, however, did not offer any record of Dr. D into evidence. Carrier's Exhibit F, an opinion by (Dr. Y), the designated doctor, does not confirm an opinion by Dr. D, but does confirm that Dr. G sent claimant to Dr. D for "persistent numbness in both upper extremities."

Another exhibit from carrier, an evaluation by (Dr. J) indicated that on October 15, 1993, claimant reported that after six weeks in a cast, her arms and elbows were stiff which lasted for several months. He later stated that her arm pain and knee pain were gone.

Carrier cites Texas Workers' Compensation Commission Appeal No. 941303, decided November 10, 1994, as saying that attenuated causation may require expert evidence. That case dealt with a three year period of time, when a claimant then told his doctor that the compensable injury had exacerbated his low back pain. In that case prior medical entries had indicated no exacerbation of the back and diagnostic studies showed no significant damage. The hearing officer's decision as to a compensable back injury was reversed. *Also cited* was Texas Workers' Compensation Commission Appeal No. 94999, decided September 8, 1994, as indicating that more than a possibility is needed to show injury. That case affirmed a decision that found no CTS when the treating doctor had said that causation based on work was possible, but the designated doctor was of the opinion that the CTS was "not likely" to be associated with the injury. (Note that a designated doctor's opinion as to causation is not entitled to presumptive weight as are his opinions as to MMI and IR.) Carrier then discusses Texas Workers' Compensation Commission Appeal No. 94440, decided May 31, 1994, which also affirmed the decision of the hearing officer of no compensable injury when medical opinion only recited claimant's history of exposure to fumes, but the substances inhaled were not identified. In essence, "exposure might or might not have happened".

The case under review may also be comparable to the situation found in Texas Workers' Compensation Commission Appeal No. 92503, decided October 29, 1992, in which a claimant had a "significant accident and sustained a rather serious injury." In that case the hearing officer's determination that back injury did not occur when that claimant severely twisted his ankle stepping in a hole was reversed. As in that appeal, this case also involves traumatic force, no suggestion that this wrist injury was inconsistent with the accident, common knowledge that a more painful injury and immobilization could delay recognition of symptoms in the wrists, later diagnosis of a serious condition (CTS). Not appearing in the case under review is evidence of pain felt soon after the accident to the area--however the immobilization of the arms and pain in the elbows could account for that.

Also limited in this case is medical opinion as to causation. *Compare* to Texas Workers' Compensation Commission Appeal No. 941722, decided February 6, 1995, in which a doctor's statement about a wrist injury "described claimant's fall in the same way claimant did--slipping, grabbing at a nearby trash container with her right hand, and continuing to fall." That doctor's opinion that CTS can be traumatic in origin where the wrist is hyperextended was correctly given weight.

Medical opinion as to causation was provided by carrier but excluded. Carrier asserts that it was error for the hearing officer to exclude the doctor's opinion which it said it had only received on December 1, 1994. Carrier added that it sent a copy to claimant the same day it was received. Claimant testified that she never received the report. (The hearing was held on December 6th, a Tuesday.) The hearing officer's decision to exclude

the report is reviewed under an abuse of discretion criteria. With the hearing officer specifying on the record that he believed the carrier did mail the report as stated, the provisions of Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c)(2) (Rule 142.13(c)(2)), which says that additional documentary evidence shall be exchanged as it becomes available, were complied with. To exclude Carrier's Exhibit H was an abuse of discretion. We note that there was no indication carrier could have earlier produced the report. See Texas Workers' Compensation Commission Appeal No. 94005, decided February 15, 1994, which found that a hearing officer did not abuse his discretion when documents produced the day of the hearing were denied admission; the opinion pointed out that the documents were known prior to that time and no showing was made as to any attempt to secure them earlier. Exclusion of the report in the case under review is error and must result in a remand because it provided medical opinion as to whether the fall of July 17, 1993, could cause the injuries at issue. Consideration of the report could result in a different decision.

The decision and order of the hearing officer are reversed and the case is remanded for consideration of the evidence previously excluded. The evidence may be reconsidered and findings of fact should be made upon consideration of all the evidence. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's division of hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Joe Sebesta  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge