

APPEAL NO. 961919  
FILED NOVEMBER 13, 1996

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On August 21, 1996, a contested case hearing (CCH) was held. The issues at the CCH were whether the appellant, who is the claimant, who was injured while employed by the (employer), a subdivision of the state which is self-insured through the carrier, had an injury which extended to include bilateral carpal tunnel syndrome (CTS); whether she had disability from her injury from October 13, 1995, through June 24, 1996; whether she had reached maximum medical improvement (MMI) and, if so, the date of MMI; her impairment rating (IR); and whether the carrier timely and sufficiently disputed such injuries, or could reopen the issue of compensability based upon newly discovered evidence.

The hearing officer determined that claimant's injury did not extend to CTS, that the carrier timely disputed that extension within 60 days after receiving written notice of injury, and that the claimant reached MMI on October 12, 1995, with a four percent IR as determined by the designated doctor, whose opinion was not contrary to the great weight of other medical evidence. The hearing officer held that there was no disability after the date of MMI.

The claimant has appealed, arguing that her CTS is clearly linked by the medical evidence to her injury and that the hearing officer abused his discretion by apparently considering facts outside the record ("medical literature") as to the origin of CTS. The claimant also argues that the carrier had received numerous notices of claimant's hand-related symptoms but failed to timely dispute the relationship of those symptoms to the injury. The claimant argues that the designated doctor is not entitled to presumptive weight because his IR does not take claimant's CTS into account. The claimant argues that the fact that claimant improved as a result of injections administered after the date of MMI certified by the designated doctor should have been considered as evidence that MMI was not reached. There is no response from the carrier.

DECISION

We affirm.

It was undisputed that the claimant, who assisted with the transfer of clients to facilities operated by the employer, injured her spine on \_\_\_\_\_, when she lifted a large plastic storage box containing medical charts. She stated the box weighed 60 pounds; she denied that she told the designated doctor that it weighed 40 pounds. Claimant was treated for muscle spasm initially and told to see a chiropractor if her condition did not improve. She was thereafter treated by Dr. H, D.C., who referred her in early August to Dr. L when claimant failed to improve. According to the claimant, her immediate and severe pain was in her mid-back and neck and she did not begin to notice any hand problems until she began seeing Dr. H, when she felt occasional numbness in her arm. Dr. H stated in a

letter written over a year after he treated claimant that claimant's complaints of tingling in her left arm and hand were consistent with radiating cervical problems, and that her complaints then were not characteristic of CTS.

Medical records indicate that claimant first saw Dr. H on August 2, 1995, and Dr. H noted, in addition to back and neck complaints, that claimant complained of some nocturnal upper extremity dysesthesia. Dr. L's medical reports indicate treatment for spinal strain in the three major regions of the back. On October 10, 1995, Dr. L noted that claimant complained of finger numbness beginning when she used a rowing machine at therapy. Dr. L referred her on November 9, 1995, for an EMG. This was performed on November 17th and the resultant diagnosis was bilateral CTS, which was communicated in a November 30th report of Dr. L which was received by the carrier in December.

Claimant contended that she had no problems with her hands and wrists prior to lifting the box. A report by Dr. C, written on May 8, 1995, characterizes the mechanism of injury leading to CTS as a "hyperextension" when claimant lifted the box which resulted in swelling in the wrist and pressure on the median nerves. On January 5, 1996, the carrier filed a Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21) disputing the causal connection of CTS to the \_\_\_\_\_ injury.

Claimant was evaluated on October 12, 1995, by a doctor for the carrier, Dr. B, who certified that claimant had reached MMI with a seven percent IR. Dr. B found a negative Tinel's sign upon examination of her arms. Dr. B noted nonanatomical tenderness, and disproportionate verbalization and pain response. The IR was derived from six percent for range of motion (ROM) deficits of the cervical area, and one percent for thoracic ROM deficits. Claimant was then examined by a designated doctor, Dr. RB, who certified the same date of MMI as Dr. B, but with a four percent IR. Dr. RB's examination took place in December 1995 and he found that claimant's cervical ROM was generally full and pain free except for extension. His IR was derived from thoracic ROM deficits. Dr. RB's narrative indicated that he was apprised of claimant's upper extremity complaints and examined her but opined that she had no evidence of median nerve neuritis. Dr. RB indicated his belief that EMG electrographical evidence should correlate with clinical signs to be diagnostic, and he did not find such correlation.

In June 1996 claimant was treated for her continuing neck pain by injections into the neck area, which she stated produced relief and enabled her to return to work.

On the matter of injury, we do not agree that the hearing officer's brief comment regarding medical literature about the genesis of CTS was reflective of consideration of matters outside the record. We believe that this observation is consistent with an evaluation that claimant failed to prove that she had the type of CTS which was not caused by repetitive trauma. In this case, medical evidence was conflicting; Dr. H noted that claimant's arm symptoms were not consistent with CTS and Dr. C hypothesized a "hyperextension" injury in the course of lifting as the basis for CTS. The hearing officer, as sole judge of the evidence, was not bound to accept that a hyperextension injury in fact

occurred when claimant lifted the box and that it resulted in CTS.

As to whether the carrier timely disputed the CTS injury, we note that a carrier is required to dispute the compensability of an injury not later than 60 days after receipt of notice of injury or it will waive its right to do so. Section 409.021(c). A carrier may reopen inquiry into compensability if there is a finding of evidence that could not reasonably have been discovered earlier. Section 409.021(d).

Texas W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6(c) (Rule 124.6(c)) makes clear that a carrier that has begun payment of benefits must file its dispute on or before the 60th day after it receives "written notice of injury".

Rule 124.1, as effective at the time, defined written notice of injury:

- (a) Written notice of injury . . . consists of the insurance carrier's earliest receipt of:
  - (1) the employer's first report of injury;
  - (2) the notification provided by the commission under subsection (c) of this section; or
  - (3) any other notification, regardless of source, which fairly informs the insurance carrier of the name of the injured employee, the identity of the employer, the approximate date of the injury, and facts showing compensability. [Emphasis added.]

In this case, the Employer's First Report of Injury or Illness (TWCC-1) was filed on July 28, 1995, and stated that claimant hurt her back. Compensability was not disputed for the disclosed injury. The hearing officer determined that the first notice of CTS as related to the injury was received by the carrier on December 16, 1995 (the date that appears to be stamped on Dr. L's November 30th report), and that the carrier timely disputed compensability of the CTS. We affirm this determination. The carrier is required to dispute injuries, not symptoms. In this case, the symptoms briefly noted by claimant's doctors prior to the recommendation for claimant to have an EMG could logically be attributed to her spinal injury. We cannot agree with claimant's argument that the carrier was fairly on notice prior to December 1995 that there was a different injury, CTS, which it had to investigate and dispute.

Concerning whether the IR of Dr. RB should be set aside because he did not rate claimant's entire injury, the Appeals Panel has before stated that it is impairments, and not just injuries, that merit an IR. Texas Workers' Compensation Commission Appeal No. 951095, decided August 22, 1995. Although the hearing officer's determination that CTS was not included in the injury would dispose of the need to rate that condition, Dr. RB's report indicates he evaluated claimant's upper extremity complaints but was of the opinion

that there was no objective evidence of either the diagnosis of CTS or impairment, as defined by Section 401.011(23). The hearing officer properly gave presumptive weight to the designated doctor's report on MMI and IR.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order on all points appealed.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Judy L. Stephens  
Appeals Judge