

APPEAL NO. 980089

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 2, 1997. With respect to the issues before her, the hearing officer determined that a compensable injury of \_\_\_\_\_, was not a producing cause of respondent's (claimant) "mild brain trauma" but that the mild brain trauma is compensable because appellant (carrier) waived its right to contest compensability by failing to timely contest compensability of that injury. The determinations that claimant's compensable injury was not a producing cause of the claimant's head injury have not been appealed and therefore have become final. Section 410.169.

Carrier appeals contending that it did not receive notice of a brain trauma/brain shaking injury until May 1997 and then timely contested compensability within 10 days of receiving such notice. Carrier cites several medical reports which make no mention of the alleged brain injury. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. Claimant responds pointing out several written notices which gave carrier fair notice of the claimed head injury prior to May 1997. Claimant urges affirmance.

DECISION

Affirmed.

It is undisputed that claimant, a bus driver, sustained a compensable injury on \_\_\_\_\_, when the bus he was driving was struck from behind by another vehicle. Claimant reported the accident and that day completed an accident report where he claimed as injuries "[h]eadaches & [l]ower back." A return to work slip dated \_\_\_\_\_, lists a diagnosis of vertigo. In a report dated December 16, 1993, a (Dr. E) commented that claimant's complaints included "headaches, vertigo and insomnia." A chart note dated December 28, 1993, notes that claimant "still has headaches." Claimant saw several doctors who treated claimant for back and neck injuries prescribing muscle relaxants and anti-inflammatories. Claimant eventually began treating with (Dr. T), who in a report dated June 29, 1994 (of an examination on June 21st), noted a history of headaches after the accident and had an impression of "cerebral concussion," along with sprain injuries of the cervical and lumbar spine. Claimant conceded that he did not know if that report was sent to carrier.

Claimant testified that he continued treatment with several doctors (claimant changed treating doctors from Dr. T to (Dr. B) in November 1994) keeping carrier informed of his progress. By letter dated November 19, 1996, received by carrier November 21, 1996, claimant stated:

The purpose of this letter is to fully inform you of injuries I sustained on the job, \_\_\_\_\_. You are probably already familiar with my lower back problems . . . . Along with these copies I am enclosing a letter written by attorney explaining "Mild Brain Trauma Injury". Also enclosed is a dated receipt where I received counseling.

I am requesting that you review this material and insert it in my medical file. Hopefully this will give you a better understanding of what I experienced following the accident as well as still experiencing presently . . . .

In a report dated December 2, 1996, Dr. B stated that claimant's difficulties concentrating prompted Dr. B to recommend referral to a neurologist. Claimant was eventually referred to (Dr. K), who apparently is a neuropsychiatrist. Dr. K in a report dated March 3, 1997, recites claimant's history, and comments that claimant "probably did experience a brain shake injury which might be productive of some mild postconcussional type symptoms such as he is describing." Carrier contends that this report, which it received on May 12, 1997, was "the first medical report which specifically mentions a brain trauma or brain shaking type injury . . . ." Carrier disputed compensability of a head injury in a Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21) dated May 22, 1997.

The hearing officer determined that carrier received written notice of claimant's "mild brain trauma" on November 21, 1996, when carrier received claimant's November 19, 1996, letter. Carrier contends that letter "did not constitute sufficient notice which required the carrier to dispute the alleged condition with a TWCC-21" emphasizing that neither Dr. B, nor several other doctors make mention of any alleged brain injury until Dr. K's letter which carrier received on May 12, 1997.

At issue here is whether claimant's accident report, Dr. T's June 1994 diagnosis of a "cerebral concussion" and more particularly, claimant's November 19, 1996, letter purporting to inform carrier of the injuries he sustained in the compensable accident referencing a "mild brain trauma injury" fairly informed carrier of an alleged head or brain injury. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1(a) (Rule 124.1(a)) provides that where no first report of injury has been filed by the employer, written notice can be:

. . . 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 injury, and facts showing compensability.

In this case, claimant's signed letter clearly references the compensable injury and counseling presumably for a mild brain injury, requesting that carrier insert that information in his "medical file." We have previously held that where notice is asserted to have stemmed from another writing under Rule 124.1(a)(3), whether it gives fair notice of injury is a fact determination for the hearing officer. Texas Workers' Compensation Commission

Appeal No. 950151, decided March 15, 1995. We cannot agree that the hearing officer erred in determining that carrier was given written notice which fairly informed carrier of claimant's "mild brain trauma" injury on November 21, 1996, when carrier received claimant's letter and that letter conformed with the requirements of Rule 124.1(a)(3). That letter triggered the carrier's affirmative duty to investigate the claim. See Texas Workers' Compensation Commission Appeal No. 93967, decided \_\_\_\_\_. In any event, the hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and the hearing officer's determinations on the written notice to carrier are not incorrect as a matter of law or so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Accordingly, we affirm the decision and order of the hearing officer.

Thomas A. Knapp  
Appeals Judge

CONCUR:

Susan M. Kelley  
Appeals Judge

Elaine M. Chaney  
Appeals Judge