APPEAL NO. 980130

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 27, 1997, hearing officer. He determined that the respondent's (claimant) compensable injury of _____, extended to the left upper extremity and right hip; that the appellant (carrier) waived the right to contest the compensability of the right hip injury; and that the issues of maximum medical improvement (MMI) and impairment rating (IR) were not ripe for adjudication pending reexamination by the designated doctor. The carrier appeals these determinations, asserting both error of law and that they are not supported by sufficient evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a registered nurse. She sustained a prior compensable injury to her entire back (cervical, thoracic, and lumbar spine) on (injury date 1). While at work on (injury date 2), she fell while helping to lift a patient. In the process, she said, she fell backward onto the toilet, hit her right shoulder, fell further hitting her right hip and then hit the wall with her left shoulder. The report of this incident which she completed for her employer on _____, does not mention the right hip or left upper extremity, because, she said, she had greater pain in her right hand and shoulder. Similarly, the Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) signed by the claimant on April 19, 1995, does not mention the hip or left upper extremity. According to the claimant, she did not realize she also hurt her right hip until the following April or May. (Dr. B), an initial treating doctor, in a report of November 6, 1994, diagnosed 10 conditions, including a left ankle fracture, none of which included the left upper extremity or the right hip injury. The claimant later saw (Dr. N), who, in an Initial Medical Report (TWCC-61) of May 22, 1995, noted a history of right hip, but does not mention the left upper extremity. In a report of June 14, 1996, (Dr. C) diagnosed left carpal tunnel syndrome (CTS) and left cubital tunnel syndrome. In a report of July 22, 1996, Dr. N diagnosed bilateral (CTS) and left cubital tunnel syndrome. Eventually, on October 14, 1996, Dr. Halaby (Dr. H), the designated doctor, certified that the claimant reached MMI on August 21, 1996, and has a 13% IR.

The claimant had the burden of proof that when she fell on (injury date 2), she injured her right hip and left upper extremity. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so was a question of fact for the hearing officer to decide, Texas Workers' Compensation Commission Appeal No. 93440, decided July 15, 1993, and in this case could be proved by the testimony of the claimant alone if found credible. Texas Workers' Compensation

Commission Appeal No. 92083, decided April 16, 1992. The hearing officer found the claimant credible in her assertions about what body parts she struck during the course of her fall and her explanation of why she did not initially complain about a right hip and left upper extremity injury. In its appeal, the carrier contends that the claimant was demonstrating many of these same symptoms before her (injury date 2), fall and "there was very little evidence introduced to support her contention that either her left upper extremity or right hip were injured in the (injury date 2), incident." Some of the confusion over the existence of a compensable left upper extremity injury arguably stems from the way the issue was presented in terms of an upper extremity injury rather than specific injuries to the left wrist and elbow. Even if the claimant had some symptoms prior to (injury date 2), the fall could have caused an aggravation of the underlying condition which could have been compensable in its own right. *See* Texas Workers' Compensation Commission Appeal No. 93577, decided August 18, 1993. Also, the claimant needed only to prove that the later fall was a producing cause, not the sole cause, of a left upper extremity injury. Texas Workers' Compensation Commission Appeal No. 950800, decided June 30, 1995. We will reverse a factual determination of a hearing officer only if it is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). The carrier, as quoted above, seems to concede that some evidence exists to support the decision of the hearing officer on the extent of injury issue. Having reviewed the record, we are satisfied that the evidence deemed credible and persuasive by the hearing officer was sufficient to support his resolution of this issue.

The carrier also appeals the determination of the hearing officer that the carrier waived its right to dispute the compensability of the right hip injury within 60 days of receiving notice of this claimed injury as required by Section 409.021(c). *See also* Texas Workers' Compensation Commission Appeal No. 93491, decided August 2, 1993. The hearing officer found that Dr. N's report of May 22, 1995, constituted written notice of the claimed hip injury. It was date-stamped as received by the carrier on June 5, 1995. The compensability of a right hip injury was not disputed within 60 days of June 5, 1995. The report itself does not contain a formal diagnosis of a hip injury, but records in the history section that the claimant stated she fell on (injury date 2), while lifting a patient "injuring her right hip . . . ." Dr. N further wrote that hip x-rays were not taken at this visit.

The written notice that triggers the 60-day response rule must, among other things, fairly inform the carrier of "facts showing compensability." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1 (Rule 124.1). The carrier, relying on our decision in Texas Workers' Compensation Commission Appeal No. 961603, decided September 30, 1996, contends that the written notice of injury must be considered in the "context" in which the report is written. Important to the resolution of that case was a reference in the notice to "at best" symptoms of a cervical injury against the background that the claimant had not asserted a cervical injury. Nonetheless, the Appeals Panel did not expressly hold that the notice was not adequate. In the case we now consider, the carrier quotes extensively from the claimant's testimony to establish a "context" for the notice of a right hip injury. Much of

this testimony dealt with the position of the claimant that her prior 1992 injury did not extend into the legs. Other evidence pointed out by the carrier consisted of medical reports which attributed the current conditions of the claimant to the prior injury; and which provided general references to radiating pain. In addition, neither the incident report completed for the employer nor the TWCC-41 refer to a right hip injury. From our review of the record, the conclusion is almost inescapable that the background or "context," of Dr. N's May 22, 1995, report was discordant and confusing. Dr. N does not include an express diagnosis of a hip injury, nor does he expressly exclude such a diagnosis. Arguably, he was waiting for future diagnostic testing to shed light on a precise diagnosis. In any case, the purpose of the notice is not to provide medical proof that a compensable injury occurred, but to provide facts that support the position of compensability which, in turn, will enable a carrier to investigate the matter further. *See* Texas Workers' Compensation Commission Appeal No. 93967, decided December 9, 1993. The May 22, 1995, report references a hip injury and the position of the claimant that she sustained the injury in a fall at work. We are satisfied that this is sufficiently clear, against a jumbled background of a prior claim and extensive medical evidence, to establish a contention of compensability. It was sufficient to alert the carrier to the nature of and basis for the claim. For this reason, we find no error in the hearing officer's determination that this report constituted sufficient notice of a claimed right hip injury.

Finally, the carrier appeals the determination of the hearing officer that the issues of MMI and IR were not ripe for adjudication because Dr. H, the designated doctor, had not "completely" examined the claimant. (Finding of Fact No. 11). We assume that this is a reference to Dr. H's failure to consider as part of the compensable injury a right hip and left upper extremity injury. Dr. H saw the claimant twice, on January 29, 1996, and again on September 10, 1996. It is unclear whether he examined and evaluated the left upper extremity for purposes of an IR. According to his second report, he was waiting for the claimant to produce medical records of a right hip injury before he evaluated the condition. Such were not forthcoming. In any event, a designated doctor is required to consider the entire compensable injury in arriving at an IR. Texas Workers' Compensation Commission Appeal No. 94435, decided May 27, 1994. From the record before us, we conclude that Dr. H certified a date of MMI and IR without having considered the entire compensable injury. While the claimant's delay of approximately one year in challenging Dr. H's certification is problematic, we do not believe that this in itself justifies or requires that we remand this case to the hearing officer to resolve the issues of MMI and IR based on the existing evidence.

The decision and order of the hearing officer are affirmed.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge