APPEAL NO. 990273

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 20, 1999, a hearing was held. He (hearing officer) determined that the respondent (claimant) did sustain a compensable injury to his lumbar spine in an accident occurring on _____. He also found that appellant (carrier) did not timely dispute compensability of the lumbar injury and that no prior decision had been considered and determined whether the compensable injury of _____, included the lumbar spine. Carrier asserts that a prior decision of a hearing officer and the Appeals Panel which found that carpal tunnel syndrome (CTS) was not part of the compensable injury serves to bar claimant from asserting any other injury as part of the compensable injury; it also states that claimant did not sufficiently prove that a lumbar injury occurred, stating that "objective" medical evidence was insufficient; finally carrier states that it was not notified that claimant was "claiming" a lumbar injury until a benefit review conference (BRC) in November 1998, adding that it only had notice of pain, not injury, before that time. Claimant replied that the decision should be upheld.

DECISION

We affirm.

The hearing officer provided not only a thorough, credible opinion that is fully supported by the record, but also clearly addressed the issues and evidence pertinent thereto without providing detail as to immaterial matters. We adopt his opinion as our own and will only provide limited detail in stating why his decision is affirmed.

Claimant stated that he hurt his neck, upper back, arms, and low back at work for employer Company on _____, when he tried to hold a heavy item as it moved down a conveyor away from him. Carrier stated that the decision in a prior case which determined that the injury did not include CTS bars claimant from raising a question of lumbar injury at this time. A copy of the hearing officer's decision in the cited case was signed on June 20, 1997, and that case was reviewed by Texas Workers' Compensation Commission Appeal No. 971908, decided October 31, 1997 (Unpublished). The hearing officer accurately quotes from a stipulation made at that hearing which was the focal point of the argument that claimant was thereafter barred from raising any issue as to what the injury included. That stipulation in effect stated what the two parties could agree to. In saying that claimant "sustained a compensable neck, upper back, and thoracic spine injury . . . ," this stipulation did not use the word "only," The stipulation stated that the parties agreed that the injury included certain areas and did not state a limitation in regard to, or have an effect upon, other possible injuries which it did not address. The determination that the claimant was not barred from raising an issue at this time as to whether the _____, compensable injury included the lumbar spine is sufficiently supported by the evidence and is not contrary to the law.

The carrier asserts that it only had notice of pain in the low back but no injury prior to November 1998 and added that no medical evidence showed a back injury was caused by the incident. The hearing officer set forth many medical records not just of pain, but of treatment of the low back; his findings as to those dates and occurrences are sufficiently supported by the evidence. He stressed, as we will, the Report of Medical Evaluation (TWCC-69) signed by claimant's treating doctor, Dr. F, on March 3, 1998 (received by the Texas Workers' Compensation Commission (Commission) in April 1998), which related injury to claimant's low back on _____, and provided a five percent impairment rating for a specific disorder of the lumbar spine from Table 49, Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association and an additional two percent for range of motion limitations to the lumbar spine. We note that both "impairment" and "impairment rating" found in Section 401.011(23) and (24) can only result "from a compensable injury." The hearing officer accurately applied Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1(d) which states that a carrier is presumed to have received a document required to be sent to the Commission and carrier when the Commission received it. Since carrier has not shown any Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), but relies on its dispute at the November 1998 BRC, its receipt of the TWCC-69 in April 1998, was over 60 days prior to the BRC in November 1998 when it first disputed. While a claimant's claim may serve to impart written notice to a carrier of a particular injury, the 1989 Act does not require that evidence of a claim be provided but only notice of or evidence of an injury. (*See* Rule 124.1) The determination that the carrier did not timely dispute compensability of a lumbar injury is sufficiently supported by the evidence.

Claimant testified that he hurt his low back in the _____, incident and that he told his doctors of such injury. Dr. F's records show claimant's complaints of low back pain in December 1996 and, in January 1997 Dr. F noted tenderness in the lumbar spine, not just that claimant said he was tender in that area. This note also shows that the lumbar area was treated with heat in January 1997. Similar notes were repeated by Dr. F. In June 1997, Dr. F had claimant in work hardening for the "neck, mid and low back areas." On June 2, 1998, in a letter to claimant's lawyer, Dr. F stated that claimant's primary treatment had been to the neck, but "it is true that he did sustain a mid and low back injury that has been documented in some of his treatment prior to coming to this facility . . . ." Medical opinion does not have to be provided in terms of "reasonable medical probability." This evidence shows that claimant's complaints of back pain were documented within six months of the injury and treatment, along with objective signs of injury, beginning within seven months of injury; in these circumstances medical opinion as to causation is not required. However, if it would be considered that claimant was obligated to provide medical evidence as to this allegation of back injury, the statement of Dr. F would suffice as a basis for a determination of causation. *See* Texas Workers' Compensation Commission Appeal No. 950710, decided June 8, 1995, which indicated that the words "reasonable medical probability" do not have to be included if the substance of the opinion is that the assertion is probable. The hearing officer could reasonably accept the statement, "it is true that he did sustain a mid and low back injury" as indicating reasonable medical probability in this case.

There is no requirement that any injury be proven by "objective" medical evidence. In those cases, such as relating to cancer or other diseases, that are outside the knowledge of laymen, the only requirement is for medical evidence to be based on reasonable medical probability. Upon what the physician bases his opinion as to reasonable medical probability is not set forth. It may include objective evidence, but if it did not that would go to the weight to give it as determined by the fact finder. The only matter requiring "objective" medical evidence under the 1989 Act is impairment (*see* Section 408.122(a)).

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge