

APPEAL NO. 990463

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 26, 1999, a hearing was held. He (hearing officer) determined that the appellant (claimant) did not sustain bilateral carpal tunnel syndrome (CTS) in addition to a compensable back injury on _____; he also determined that respondent's (carrier) dispute of the compensability of CTS was timely made. Claimant asserts that carrier's dispute of CTS was not timely; she also appears to be stating not that CTS was shown but that the numbness and pain in her hands is based on a cervical injury. Carrier replied that the decision should be affirmed.

DECISION

We affirm, as reformed.

Claimant testified that she sustained injury in two different incidents on _____. First, while in a body of water with children she cared for, an innertube was overturned and, in the process, a child was thrown/landed upon claimant's neck; later, when a child, wearing no shoes, broke a glass container, she lifted and removed him to assure no lacerations. Claimant said her neck popped when the child fell on her in the water. She said that at the end of the day when she left work, she was "stooped over" because of stiffness in her back. She saw Dr. C, D.C., on July 17, 1995. He noted lumbar problems and sciatic neuralgia. In September 1995, Dr. C referred claimant to Dr. D.

On September 12, 1995, Dr. D listed claimant's chief complaint as low back pain, but also noted that she had neck pain and complained of her hands "going to sleep" within "a few weeks" of the injury. (Dr. D's initial report only lists the picking up of the child incident and does not mention the child in the water falling on claimant's neck incident.) Dr. D's examination noted a positive Tinel's sign in both wrists, but he stated in his diagnosis at the conclusion of the report that he was considering cervical radiculopathy "vs" bilateral CTS. In an October 1995 note, Dr. D again listed cervical radiculopathy "vs" CTS, while continuing to list her low back pain; he now listed neck pain, also. In his note of November 13, 1995, Dr. D again noted numbness in both arms and, for the first time, assessed CTS in addition to the low back pain. Carrier provided a Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21) dated January 8, 1996, which disputed CTS.

The hearing officer found that the first written notice of CTS was provided in the report of Dr. D of November 13, 1995, and that carrier, on January 9, 1996, disputed compensability of CTS. The hearing officer also found no evidence was provided, even in the November 13, 1995, medical record that related CTS to the compensable injury. The finding of fact that even the November 13, 1995, report did not provide facts showing causation is disregarded as unnecessary. While Texas Workers' Compensation Commission Appeal No. 981579, decided August 24, 1998, said that merely listing in a medical record a complaint of pain in an area not previously treated did not impart notice of

injury, it did so in the context of a lengthy delay after injury before appearance in a medical record, while medical records in this case noted a complaint of numb wrists two months after the injury. The conclusion of law that carrier did not waive the right to dispute CTS is sufficiently supported by the evidence. References to CTS in September and October may have been reasonably considered by the hearing officer as not showing notice of CTS because Dr. D, through his use of "vs," appeared to state that CTS was only a possibility. See the concurring opinion in Texas Workers' Compensation Commission Appeal No. 982282, decided November 9, 1998.

The hearing officer also concluded that claimant did not show she sustained a compensable CTS injury. He found that the medical evidence did not support the CTS as related to the incident of _____. While the hearing officer's finding of fact used the term "incident" as if there were only one incident, his Statement of Evidence makes it clear that he considered both incidents of _____. Since the finding of fact in question referred to medical evidence, the use of the singular "back incident" is not in error since Dr. D only referred to that incident in his comments and opinions. (Dr. D repeated his September 12, 1995, reference to a singular picking up a child injury in his note of April 22, 1996.) When CTS is asserted based on one incident, as opposed to repetitive trauma, medical evidence has been the basis of a finding of CTS. See Texas Workers' Compensation Commission Appeal No. 941722, decided February 6, 1995.

In addition, on July 16, 1997, Dr. D noted, "the numbness has pretty much resolved from her hands following her delivery. She delivered on June 10, 1997." However, his note of July 22, 1998, shows claimant having pain in both hands "at about 10/10 and they wake her up at night." These observations (notwithstanding Dr. D's November 4, 1998, letter in which he said he believed the onset of CTS occurred when she was injured) together with Dr. Co comments after his examination of April 8, 1996, in which he provided no impairment rating for wrists, elbows and shoulders because, as he stated, "not part of compensable injury," provide evidence that the _____, injury did not cause CTS. The determination that the claimant did not sustain CTS as part of the compensable injury of _____, is sufficiently supported by the evidence.

Claimant's appeal shows her concern that her cervical injury has somehow been rejected. We note that there was no issue as to whether the claimant's cervical injury was compensable. There was no issue of whether claimant's lumbar injury was the only injury sustained on _____; the issue simply questioned the compensability of CTS. We note that while Dr. D assessed both cervical radiculopathy and CTS in his November 13, 1995, note, the carrier's TWCC-21 provided in the record only disputes CTS. In addition, carrier provided the report of Dr. Co which sets forth, "a cervical, lumbar and lower extremity compensable injury" occurred on _____. With no issue as to compensability of a cervical injury, any reference in the hearing officer's opinion or his decision and order that may indicate that the compensable injury only included a lumbar injury is disregarded. That part of the decision found at the conclusion of the hearing officer's opinion which says, "claimant suffered a compensable back injury on _____" (emphasis added) is not incorrect, but we note that there was no issue as to what the compensable injury included, except in reference to CTS. Since that sentence is not exclusionary, it is not modified. The next

sentence may be read as exclusionary and therefore it is modified to read, "Claimant's bilateral [CTS] is not related to the compensable injury." The decision part of the opinion should not include the word "back" when it refers to "the" compensable injury.

As modified, the decision and order are sufficiently supported by the evidence and are affirmed. 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

Elaine M. Chaney
Appeals Judge