APPEAL NO. 990510

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 9, 1999, a contested case hearing (CCH) was held. With regard to the issues before him, the hearing officer determined that the compensable (repetitive trauma bilateral carpal tunnel syndrome (BCTS)) injury did not extend to include the cervical and thoracic spine because "cervical thoracic strain tension myalgia is a description of pain, not an injury," and that respondent (carrier) did not waive the right to contest compensability of the claimed extent of injury because carrier "was under no obligation to dispute a claimed injury when no injury was actually claimed."

Appellant (claimant) appealed, citing medical reports, the recommendation of the benefit review officer and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.1002 (Rule 134.1002) that claimant believe support her position that the compensable injury did extend to the neck and back and carrier had not timely disputed compensability of the cervical and thoracic injuries. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Carrier responded, asserting that Rule 134.1002 was not timely exchanged and "therefore it should not be allowed as admissible." Carrier also contends that the claimed injuries have not causally been linked with the work activities and "therefore Carrier did not have an obligation to file a notice of refusal." Carrier urges affirmance.

DECISION

Reversed and remanded.

It is undisputed that claimant, employed by the (employer), was in charge of administering employee training, spent considerable time working at a computer and conducting computer training, worked overtime and went to school. The hearing officer comments that claimant "and her records agree that she was under a lot of stress and strain at the time." Carrier has accepted liability for a BCTS injury and the issue is whether the compensable injury extended to include the cervical and thoracic spine. Although the date of injury is listed as _____, claimant contends the date of injury was (claimant's alleged date of injury); however, the date of injury does not appear pivotal and is not appealed. As the hearing officer notes, at least nine doctors have medical reports and records in evidence and, although the hearing officer states that he does not propose to summarize the records "in detail," he does have eight or nine pages of summary in his Statement of the Evidence.

Initially, claimant's treating doctor was Dr. D, who, in a report of a June 6, 1996, visit, noted claimant's work at a computer "six to eight hours a day" and no specific trauma. Dr. D notes hand and wrist spasms and concludes "that tension myalgia of the . . . upper back is contributing to this" because the typing for six to eight hours a day "is an aggravating factor although not causative." The report lists claimant, an account number and shows "cc: Insurance Carrier." In a report of June 20, 1996, Dr. D has an assessment of right

lateral epicondylitis with thoracic outlet. This report also has "cc: Insurance." In a letter dated August 7, 1996, directed to the carrier, Dr. D discusses the "thoracic outlet area secondary to stress, posture, etc.," and therapy, including "myofascial release in the thoracic back." A report of a November 27, 1996, visit from Dr. D assesses "thoracic outlet tension myalgia," with "cc: Insurance." (In a later, May 6, 1997, report, Dr. D explained that thoracic outlet tension myalgia is not the same as thoracic outlet syndrome (TOS) and that claimant does not have TOS.)

Claimant was sent to Dr. G by carrier for an independent medical examination and, in a report dated April 28, 1997, Dr. G diagnosed "[m]yofascial pain disorder with evidence of a right lateral epicondylitis," but no evidence of TOS. Dr. G noted significant functional overlay, but was of the opinion that claimant's injuries were work related. Dr. D, in her May 6, 1997, report, expressed agreement with Dr. G. (The hearing officer applied a medical dictionary definition to Dr. G's report and concluded Dr. G said that claimant had a "tennis elbow in the right elbow, with pain disorder of the tissues covering the muscles." In a progress note labeled "Initial Evaluation," dated January 30, 1998, Dr. D noted complaints of "cerviothoracic strain," headaches, stress and tension, and diagnosed "cervicothoracic strain tension myalgia" with a "cc: Insurance Carrier."

Claimant changed treating doctors in July 1998 to Dr. C, who, in a report of a July 13, 1998, initial visit, diagnosed cervical sprain, headaches and muscle pain, in addition to the BCTS. As noted by the hearing officer, elsewhere on the report Dr. C refers to a cervical strain. This report appears to have been received by carrier on July 24, 1998. Claimant was referred for an MRI, which was performed on July 22, 1998, and which Dr. C read as:

> **IMPRESSION:**
>
> 1. Abnormal study demonstrating multilevel disc disease as described above.
>
> 2. There are posterior protruding discs at the C3-4 and C4-5 levels.
>
> 3. There is posterior bulging disc at C5-6 which impresses the anterior thecal sac and extends slightly greater to the right of midline.
>
> 4. Degenerative osseous changes, as described above.

Claimant was also referred to Dr. E as a designated doctor to assess maximum medical improvement and an impairment rating. In a report dated August 5, 1998, Dr. E noted complaints of bilateral arm, hand and neck pain. Dr. E also noted degenerative disc disease at C5-6 and "disc degenerative bulging" at C3-4 and C4-5. Dr. E commented that claimant was to see Dr. RC, a neurologist, later that day. Dr. E goes on to comment on causality, saying:

> a person who has been in this "computer interaction posture" for several years can develop significant postural and cervical degenerative changes from repetitive microtrauma, therefore, I feel that the cervical abnormalities seen on today's examination are indeed due to chronic work related postural dysfunctions.

The hearing officer, in the Statement of the Evidence, translates that to mean:

> The translation of that seems to be that a person who sits in a chair wrong could develop postural and cervical degenerative changes from repetitive microtrauma. However, [Dr. E] doesn't support his statement of belief. It is generally considered that sitting per se does not cause an injury. If [Dr. E] seeks to say that the poor posture caused the Claimant's degenerative disc disease, he gives no information to support such a theory. Degenerative disc disease is well known to be the invidious and insidious result of increasing age.

Claimant was referred to Dr. RC for a neurological consult by Dr. C. In a report dated August 5, 1998, Dr. RC noted headaches, numbness of the fingers, and limitation of cervical range of motion (ROM). Dr. RC concluded:

> The patient has multiple levels of disc degeneration. In the absence of specific injury to the cervical spine, it is not felt that the multiple disc disease demonstrated is related to the patient's workmen's [sic] compensation claim. She has had no falls or injuries that would have caused these disc abnormalities. These disc abnormalities may be related and probably are contributing to the patient persistent cervical spine discomfort and muscle tension headaches arising from the cervical spine. There was no work related injury that would have caused these disc abnormalities. I tend to agree with [Dr. D] that the patient's arm symptomatology is related to many hours on the computer. This is a work related injury.

A nerve conduction study was performed on August 20, 1998, by Dr. J., who found an abnormal study of "bilateral C6 spinal nerve root abnormalities as well as [BCTS]." In a follow-up report of September 14, 1998, Dr. J had clinical impressions of BCTS, cervical disc degeneration with neuroforaminal stenosis and myofascial symptoms." Subsequently, claimant was referred to Dr. W by Dr. C. Dr. W noted complaints of headaches, the MRI studies and evidence of multiple level degenerative disease at C4 through C6. Dr. W commented that her type of work "is certainly a significant component of her pain syndrome." A follow-up report of October 14, 1998, by Dr. W has an impression of: "persistent pain syndrome in part related to cervical spondylosis." A November 20, 1998, impression by Dr. W was "[p]robable spinal headache at this time," and "[c]ervical spondylosis without myelopathy." A cervical myelogram was performed on November 18, 1998, at the suggestion of Dr. E and Dr. W. That test showed "a shallow central . . . disc

herniation" at C5-6 with no nerve root compression, and a shallow central disc protrusion at C4-5, probably representing "an asymmetric disc bulge."

Claimant saw Dr. H for a carrier required medical examination on January 19, 1999. In a report of that date, Dr. H states:

> I think she has what would be called multiple crush syndrome but the majority of the symptoms are at the carpal tunnel level and some of this could be associated with her cervical spondylosis. All of these entities, so far as I am concerned, are work-related . . . and it certainly fits with it for the early onset of cervical spondylosis due to the head posture with typing and using word processors.

Dr. H further suggested claimant see a psychiatrist for "conversion hysteria of some type" and speculated that claimant may have "Raynaud's Phenomenon "because there is a high incidence of RSD [reflex sympathetic dystrophy] postop following carpal tunnel releases . . . ."

The hearing officer did a detailed review of the medical evidence and concluded:

> At the [CCH] the Claimant specifically identified the injury as cervical thoracic strain tension myalgia. Translated and explained this diagnosis means a tense muscle with diffuse muscle pain in the upper back and neck. Or in other words, a pain in the neck and back. Since pain is not an injury, we cannot say that the Claimant's original injury, which was determined to be [BCTS], extends to the cervical and thoracic area.

We disagree that the issue before the hearing officer is whether the BCTS extends to the cervical and thoracic area (which medically is unlikely) but rather whether the compensable repetitive trauma injury of typing and computer usage also caused a cervical and/or thoracic injury. The hearing officer went on to comment that "degenerative disc disease in the neck area . . . is common in the aging population." (Claimant is presently 43 years old and we are uncertain whether that constitutes an "aging" person.) The hearing officer goes on to comment that claimant's diagnosis (presumably the cervical thoracic strain tension myalgia) "did not constitute an injury, but a description of pain" and makes a finding that:

FINDING OF FACT

7. The claimed injury to the cervical and thoracic area of cervical thoracic strain tension myalgia is a description of pain, not an injury.

Claimant, in her appeal, cites Rule 134.1002 dealing with a diagnosis of myofascial pain syndrome, with a diagnosis code of 729.1 myalgia (found in Dr. C's July 13, 1998, Initial Medical Report (TWCC-61) and September 20, 1998, Specific and Subsequent Medical Report (TWCC-64)). Clinical indicators include, but are not limited to, limited ROM,

muscular spasms and headaches. It would appear to us that the diagnosis of cervical thoracic strain tension myalgia constitutes more than a diagnosis of pain insufficient to be classified as an injury, which is defined as damage or harm to the physical structure of the body to include an occupational disease which, in turn, includes a repetitive trauma injury. *See* Sections 401.011(26), (34) and (36). We reverse the hearing officer's finding that claimant's claimed extension is only pain and not an injury and remand for the hearing officer to make specific findings on the nature of the claimed extension to the cervical and thoracic spine (if it is different than the cervical thoracic strain tension myalgia), whether the claimed extension was caused by claimant's typing/computer use work activities and for consideration of Rule 134.1002. Carrier, in its response, contends that Rule 134.1002 was not timely exchanged pursuant to Rule 142.13. We hold that specific provisions of the 1989 Act, Texas Workers' Compensation Commission (Commission) rules and Appeals Panel decisions do not have to be exchanged in order to be considered at the CCH or on appeal. Carrier further contends that claimant must prove a causal link between the traumatic activities "and the incapacity." We note that carrier has accepted liability for a repetitive trauma BCTS injury, that claimant testified that her cervical and thoracic myalgia were caused by her repetitive trauma activities and that several of the medical reports make specific comments that claimant's injury was associated with her work (although others say there is no causal connection).

Regarding carrier's timely dispute of compensability, a carrier must contest compensability of an injury on or before the 60th day after it receives written notice of the injury or else it waives its right to contest compensability and is liable for payment of benefits. Section 409.021(c); Rule 124.6(b). The analysis to determine whether a carrier timely contested compensability is a two-step process. First, the hearing officer must determine when the carrier was notified of the injury. Within the first step lies an analysis of the sufficiency of the notice to the carrier. A notice of injury, for the purposes of starting the time period for contesting compensability, must be written and must fairly inform the carrier of the nature of the injury, the name of the injured employee, the identity of the employer, the approximate date of injury, and must state "facts showing compensability." Rule 124.1(a). The writing may be from any source. *Id*. A carrier must timely contest the compensability of additional injuries. Texas Workers' Compensation Commission Appeal No. 950183, decided March 22, 1995. A carrier must file a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) to contest whether an employee's injury extends to a particular part of the employee's body. *See* TWCC Advisory 96-05, dated April 5, 1996. Written reports that consider whether a condition is work related may constitute written notice of injury under Rule 124.1, whether or not a concrete diagnosis is made. Second, the hearing officer must determine if the carrier contested compensability on or before the 60th day after it received written notice. A carrier may "re-open" the issue of compensability if there is "evidence that could not reasonably have been discovered earlier." Section 409.021(d). The hearing officer disposes of this issue by commenting:

> Since pain is not an injury, there was no injury that could have been reported to the Carrier. Accordingly, the Carrier had no obligation to dispute an injury, since there was no injury reported.

The hearing officer makes a finding that:

FINDING OF FACT

8. The Carrier was under no obligation to dispute a claimed injury when no injury was actually claimed.

The hearing officer also comments that Dr. D's reports, which show a copy was sent to "insurance carrier," were "too generic to make a determination as to where it was sent" and that there is no evidence as to when carrier received the reports. We point out that the hearing officer directly asked the carrier's representative regarding carrier's position on the timely dispute of compensability, and carrier never alleged that it had not promptly received Dr. D's reports. Carrier's response only states that it agrees with the hearing officer's Finding of Fact No. 8 that "decisions have held that medical reports or bills, or any other documents may constitute a 'written notice' of injury to a body part not previously considered to be included in the compensable injury if these documents contain 'facts showing compensability.'" We reverse the hearing officer's Finding of Fact No. 8 as a matter of law (in this case, where there is a compensable BCTS injury, the mere allegation that the compensable BCTS injury includes other injuries is sufficient to make that finding incorrect). We remand the case for the hearing officer to make findings regarding when the carrier received sufficient written notice of claimant's claimed cervical and thoracic injuries, what constituted the written notice and to make specific findings whether carrier contested compensability on or before the 60th day after it received written notice. We do note that in evidence are TWCC-21s filed July 16, 1996, disputing an injury to the thoracic area; another filed June 4, 1997, disputing "any underlying tissue disorder"; and a TWCC-21 filed September 10, 1998, disputing a "cervical disc disease," citing Dr. RC's report. We leave it to the hearing officer's discretion whether he wishes to receive additional evidence regarding the timely dispute of compensability.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Alan C. Ernst
Appeals Judge

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Tommy W. Lueders
Appeals Judge