APPEAL NO. 990527

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 16, 1999, a hearing was held. She determined that the appellant's (claimant) bilateral cubital tunnel syndrome is a part of the compensable injury of _____, but that the claimant's shoulder problems are not; she also determined that the respondent (carrier) timely disputed compensability of the cubital tunnel syndrome and problem with claimant's shoulders. Claimant asserts that her repetitive work aggravated her shoulder problems and that the carrier failed to timely dispute her shoulder injuries. Carrier asserts that the medical evidence does not show that claimant sustained a cubital tunnel injury. Both sides sought affirmance of those determinations in their respective interests.

DECISION

We affirm.

Claimant worked as a customer service representative for (employer) on _____; she had held that position since December 1993. She testified to taking 200 to 300 calls per day and having to make data entries that involved abnormal positioning of the hands using entry keys that were hard to depress. Claimant testified that she started having shoulder pain, making it hard to sleep, approximately eight or nine months prior to _____.

Claimant saw a succession of doctors. The carrier provided a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) that is dated July 30, 1998, and contains some writing indicating it was filed on August 3, 1998. That form accepted bilateral carpal tunnel syndrome (CTS). It disputed injury to the shoulders and "all other body parts." Claimant states that carrier did not dispute her injuries within 60 days. She refers to medical documents dated July 12, 1996, in which Dr. O told a rehab nurse the "problem is more than just the hand," as sufficient to put carrier on notice. It is not. *See* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1(a)(3) (Rule 124.1(a)(3)) which calls for providing the approximate date of the injury and facts showing compensability; there was not even an injury identified. Claimant also refers to Dr. C referral on January 19, 1998, to Dr. Z as providing notice. That note said Dr. C had referred claimant to Dr. Z for "possible surgical correction of the pain" in the claimant's neck and shoulders which Dr. C said he thought was due to a "problem in her cervical spine." This comment comes closer to satisfying the requirements of Rule 124.1. Since no reference is made to claimant's work or to an _____, injury, we cannot find this note provided notice when the fact finder did not find that it provided notice. We also note that no date is shown as to when it was received. Claimant also refers generally to notice since _____. There is a document in the record from employer which authorizes medical treatment dated May 17, 1995, and that document indicates that carrier received it in _____. But that document is not an Employer's First Report of Injury or Illness (TWCC-1) provided under Rule 120.2 and Rule 120.1, so it must meet the requirements of Rule 124.1(a)(3) also. It only allows medical

care for "pain" in thumbs and shoulders which was said to have become worse after a fall in March 1995. The determination that carrier was first informed of claimant's injuries in question at this hearing by records of Dr. S which were generated in April 1998, but not shown to have been received by carrier prior to their receipt by the Commission on July 15, 1998, is sufficiently supported by the evidence. (We note that the hearing officer, while finding that carrier timely disputed these injuries, also referred to Continental Casualty Co. v. Williamson, 971 S.W.2d (Tex. App.-Tyler 1998, no pet. h.) and says it is dispositive of carrier's "timely dispute." We only observe that the hearing officer did not find that claimant had no injury, which Williamson requires to be relevant. On the contrary, the findings of fact refer to a "rotator cuff tear" and the hearing officer found that claimant did "suffer from bilateral cubital tunnel syndrome."

The hearing officer found that claimant's shoulder problems were not compensable. Dr. S, testifying very persuasively, as the hearing officer so noted, stated that he could not say that claimant's work caused a rotator cuff tear or impingement syndrome. He did say that certain work with the arms uplifted, as opposed to hanging from the shoulders, "could" aggravate an existing problem. Dr. S's notes from November 1998, indicate a torn tendon (rotator cuff) which was said to need surgery. However, the most that Dr. S said in his notes about causation was that "patients who do repetitive typing with the arms in a forward flexed position, often aggravate bursitis in the shoulder." The hearing officer was not compelled to find a compensable injury from Dr. S's testimony that work "could" aggravate a shoulder problem or from the notes just referenced. The determination that claimant's shoulder problems are not compensable is sufficiently supported by the evidence.

The carrier accepted CTS. Dr. S testified, and his notes support, that claimant's symptoms of numbness and pain in her hands and wrists may be caused by both carpal tunnel and cubital tunnel syndrome. Dr. S testified that when surgery for CTS does not alleviate the problem, that result is consistent with cubital tunnel being present also or even instead of CTS. Dr. S did not say that anyone misdiagnosed CTS but he did say that some histories and tests were not done as thoroughly as they should have been done. His testing showed cubital tunnel bilaterally with claimant having reported only very minor relief from the bilateral CTS surgery; that sufficiently presented the hearing officer with a fact question as to whether the cubital tunnel syndrome was compensable. With claimant having complained of pain that could be attributed to cubital tunnel syndrome from the inception of the injury and with carrier accepting CTS as compensable, the evidence sufficiently supports the determination that claimant's bilateral cubital tunnel syndrome is compensable.

Other physicians, such as Dr. G, thought that claimant has myofascial syndrome. The hearing officer is the sole judge of the weight of the evidence. *See* Section 410.165. She could give more weight to Dr. S's evidence than she did to that of Dr. G or any other medical evidence, such as that of Dr. O, who performed the CTS surgery for claimant.

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

_____
Dorian E. Ramirez
Appeals Judge