APPEAL NO. 990569

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 12, 1999. The issue at the CCH was whether the respondent, who is the claimant, sustained a compensable injury that included or extended to his thoracic spine or reflex sympathetic dystrophy (RSD). The appellant (carrier) stipulated to numerous injuries that the claimant sustained on _____, specifically his lumbar spine, left leg, and abdomen. (Although not listed in the decision, the carrier also accepted compensability on the record of the claimant's left arm.)

The hearing officer found that the claimant injured his thoracic spine, but that a determination of the issue of RSD "was not ripe" for adjudication.

The carrier appeals. It argues that there is no evidence to support a finding of injury to the thoracic spine (as opposed to mere pain). The carrier further argues that the hearing officer's assertions that the claimant has an injury in his left thigh which "could" produce RSD is without support in the evidence. The carrier recites evidence in favor of its position. The carrier argues that the issue of RSD was ripe for decision. The claimant responds that there is more than sufficient evidence to support the decision regarding the thoracic spine, and that the matter of whether the RSD was ripe for decision should be regarded as "nonappealable."

DECISION

Affirmed as reformed.

The claimant was employed for 19 years doing oil field work. He had gone to work in March 1998 for (employer). The claimant testified that on _____, as he was working, some tongs that were not firmly engaged slipped and whipped around, knocking him in the stomach and off his feet, into some machinery (draw works) behind him. He was taken to the (Hospital M) emergency room, and remained in the hospital for one week. He said that he continues to have mid-back pain, almost like someone is sticking something into the mid-back. The claimant said that he has always complained of all body parts that were hurt in this undisputed incident. The claimant also said that before the accident, he was in perfect health.

At the beginning of the CCH, there was discussion about the dispute over RSD. As discussion ensued, it appeared that the detection of whether the claimant had this condition as the natural result of his injuries (undisputed or otherwise) was ongoing. The claimant's attorney noted that the claimant might, or might not, ultimately be diagnosed with RSD although he had not as yet. The claimant's attorney would not expressly confirm, when asked, that he was not actively urging that RSD be considered part of the claim, only that a determination could be premature at this point. The hearing officer questioned if the matter was ripe for adjudication. The carrier responded that it believed there was enough medical

information to make the determination but, however, it would be up to the claimant to actively pursue the matter. The hearing officer concluded the discussion by saying that he would at this point leave the RSD as part of the issue, and see how the evidence developed. The RSD was not taken out of the issue at any time during the rest of the CCH.

The claimant has been referred to a number of specialists over the course of the injury, but he said his treating doctor at first was Dr. V, and then in October 1998, he changed to Dr. C. The medical records in evidence include tests that were performed while the claimant was in Hospital M; among the evaluations performed were cervical and lumbosacral scans. Both were essentially normal. Radiographic studies were also done of the claimant's abdomen, likewise accepted as part of the compensable injury at the beginning of the CCH. These were adjudged unremarkable.

On August 14, 1998, an MRI was performed of the thoracic spine. The claimant showed mild scoliosis and diffuse osteopenia, but the test was otherwise unremarkable. Dr. C stated on August 31, 1998, that there were suggestions of possible contusion in the lower thoracic spine. Another MRI test done in October 1998 found small osteophytes which minimally indented the thecal sac but did not appear to affect the cord. There were otherwise no significant abnormalities seen. Dr. V's records indicate that the claimant complained primarily of low back, abdominal, and thigh pain. In November 1998, Dr. C was speculating that the claimant might be having effects of a possible RSD (manifesting as his thoracic and leg pain). The claimant said that RSD was outside of Dr. C's expertise, so Dr. C referred the claimant to Dr. Y. Dr. Y opined that the claimant's back pain might be of possible "facetal" origin. Although Dr. Y found no herniations in the thoracic and lumbar spines, he found multi-level disc disease. Dr. Y treated the claimant with injections for pain. Dr. Y said he found no definitive evidence to support a diagnosis of RSD.

Dr. CS examined the claimant for the Texas Workers' Compensation Commission on November 30, 1998, and found he was not at maximum medical improvement. Dr. CS diagnosed a thoracic strain as one of the injuries he observed. He questioned whether the claimant had been involved in a rehabilitation program for his lumbar and thoracic spine.

Dr. R examined the claimant for the carrier a month earlier and found that the claimant was completely recovered with no impairment. He suggested that the claimant's abdominal pain might be coming from stones in his urine. This latter condition has not been otherwise diagnosed. He said that the claimant was diabetic and might have peripheral neuritis. Dr. Y noted, however, in his January 1999 examination, that the claimant had no history of diabetes.

We would note at the outset that while chronology alone does not establish a causal connection between an accident and a later diagnosed injury, Texas Workers' Compensation Commission Appeal No. 94231, decided April 8, 1994, neither does a delayed manifestation, or the failure to immediately mention injury to a health care provider, necessarily rule out a connection. *See* Texas Employers Insurance Company v. Stephenson, 496 S.W.2d 184 (Tex. Civ. App.-Amarillo 1973, no writ). The hearing officer is

the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The passage of time between an accident and the onset of symptoms is a fact, along with others, for the hearing officer to weigh. We find the hearing officer's determination of injury to the thoracic spine is supported by the record, including evidence of how the injury occurred.

Finally, under the facts here and the procedures followed at the CCH, we do not believe that the matter of RSD was "not ripe for adjudication" as the hearing officer stated. Issues reported from the benefit review conference may be resolved by agreement before or at the CCH, or withdrawn by mutual agreement from consideration. Neither procedure was followed at the CCH, and the hearing officer announced that he would leave the issue of RSD in the CCH. The existence of RSD at the time of the CCH was actually litigated. Although we understand the complexities of RSD (as was touched upon at the beginning of the CCH, is a syndrome that may naturally result from injuries, and is not itself "an injury"), we do not believe the hearing officer had the sua sponte authority to decline to determine the issue. The claimant has cited no support for his assertion that this finding, apart from any other holding of the decision, should be considered "unappealable" or not subject to the review process plainly applicable to the hearing officer's "decision" under Section 410.202.

We will not remand the case, however, because we believe the hearing officer has issued a decision on RSD regardless of his apparent disclaimer that he has not done so. He found as fact that the claimant did not currently have a diagnosis of RSD. Other fact findings which indicate in an advisory fashion that RSD "could" develop are tantamount, in our opinion, to his limitation of the decision to what was before him. Whether RSD becomes a concrete diagnosis at some time in the future and arises from the injuries here will have to be proven by the claimant at that time. We reform the decision to make clear that the claimant did not prove that he now has RSD. Consequently, sentences referring to the controversy as not being claimed or not being ripe for adjudication in Finding of Fact No. 10, Conclusion of Law No. 3, and the Decision are hereby struck. We will clarify that the carrier's responsibility for medical benefits is not truncated because a discrete injury or condition is not "diagnosed"; the claimant remains entitled to health care reasonably required under the parameters of Section 408.021(a).

For the reasons stated above, the decision is affirmed as reformed.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Alan C. Ernst
Appeals Judge