APPEAL NO. 990600

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 16, 1999. The issues at the CCH were whether the appellant (carrier) waived the right to contest compensability by not contesting within 60 days of being notified of the injury, whether the compensable injury was a producing cause of the respondent's (claimant) right hand carpal tunnel syndrome (CTS), and whether the claimant had disability from the _____, injury. The hearing officer determined that the claimant sustained a compensable injury on _____, involving pain, numbness, and tingling in her right hand and fingers; that the claimant's present complaints are continued symptoms of her _____ injury which was a producing cause of her present injuries diagnosed as CTS; that the claimant had disability from February 24 through March 9, 1998, and from September 18, 1998, through the date of the hearing; and that the carrier waived the right to contest the compensability of the claimed injury by not contesting within 60 days of being notified of the injury. The carrier appeals the determinations that the claimant's compensable injury of _____, was the producing cause of the claimant's right hand CTS; that the claimant sustained disability as a result of the compensable injury; and that it waived the right to contest compensability since it timely contested compensability after being notified of the CTS injury. No response has been received from the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

Although the nature of the injury is not entirely clear from the evidence, the claimant sustained some sort of an injury to her right hand on _____, when a toolbox handle broke as she was lifting it making "my wrist pop." She had been on the job with a temporary employer (Employer 1) for a week working for another employer (Employer 2) with repetitive duties of stripping and crimping wires with a crimper tool. After she went home her hand started swelling and she hurt "from my fingers to my elbow." She reported the problem with her hand the next day and was sent to Dr. G by Employer 1. On February 27th Dr. G diagnosed a case of "overuse syndrome" and indicated "no CTS evidence" and "neuro-circ O.K." The claimant was treated conservatively and states she was off work until March 9, 1998. However, medical notes indicate she was released to restricted duty as early as February 27, 1998. In any event, the medical records state that the claimant continued to improve and that she was released to full duty on April 7, 1998. Claimant states that when she returned to work, she was placed on different duties in the furniture department. Dr. G rendered a report dated April 9, 1998, certifying that the claimant reached maximum medical improvement (MMI) on April 7, 1998, with a zero percent impairment rating (IR).

The claimant became a full-time employee of Employer 2 on June 1, 1998. She also acknowledged that she continued working full duty until (subsequent date of injury), doing the same work in the furniture department and that she did not seek any medical care

during the period from April 7 to (subsequent date of injury). However, she stated that she continued to experience symptoms from the _____ injury and thought it would get better as Dr. G had told her but that it got worse. On (subsequent date of injury), since her hand and arm were hurting, she went to see Dr. E who subsequently diagnosed CTS. Dr. E took the claimant off work on September 18, 1998. When the carrier was notified of Dr. E's September 22, 1998, report with a diagnosis of a CTS injury, it disputed compensability on September 24, 1998.

The hearing officer rejected the carrier's position (carrier does not dispute an injury on _____) that a new injury (distinct or through aggravation) was sustained by the claimant on (subsequent date of injury), or sometime after the employment with Employer 2 started on June 1, 1998, apparently not finding a somewhat analogous case persuasive under the particular evidence before him. *See* Texas Workers' Compensation Commission Appeal No. 93696, decided September 22, 1993. The hearing officer found that the claimant's compensable injury of _____, was a producing cause of the present injury diagnosed as CTS. Although different inferences could be drawn from the evidence given the different diagnoses, the treatment, the MMI/IR of April 7th, and the return to work with no further medical care for a lengthy period of time, the issue is whether the determination of the hearing officer is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. The hearing officer found the claimant credible in her testimony that she continued to experience the same or similar symptoms between _____ and (subsequent date of injury); that she relied on Dr. G that she would get better; and that although she had a new position in her employment, she continued to perform repetitive activities. We cannot conclude from our review of the evidence, particularly given the deference regarding factual determination accorded hearing officers (Section 410.165(a)), that his determinations are so contrary to the overwhelming evidence as to be clearly wrong or unjust. Cain, *supra*; Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We reach the same result regarding disability.

We reverse and render on the issue that the carrier waived the right to contest the compensability of the claimant's CTS injury on the basis of not timely contesting within 60 days of being notified of the CTS injury. In this case, the claimant experienced an incident on _____, affecting her right hand which related to her repetitive work activity and when she experienced a "pop" in her wrist when a toolbox handle broke. The claimant had symptoms of tingling, numbness and pain, was diagnosed with "overuse syndrome" with no CTS evidence, treated conservatively, and returned to work with no further treatment from April 7 to (subsequent date of injury). The carrier did not dispute the "overuse syndrome" injury as a result of the _____ incident and apparently paid benefits for the short-term treatment to April 7, 1998, something that should not be discouraged. It had no further notice or information of any disease or injury and the claimant continued working without further treatment. Until September 22, 1998, there was nothing to place the carrier on notice of a CTS injury; to the contrary, CTS was specifically not indicated in the medical records prior to September. When advised of the diagnosis of CTS in September, the

carrier immediately disputed the CTS injury. While a dispute of CTS does not necessarily absolve the carrier from liability for benefits where it is subsequently determined and upheld that there was no new injury and that the earlier injury proximately caused or resulted in the CTS, whether the carrier was on notice of the CTS for waiver purposes is another matter. We have recognized that a carrier can be placed on notice by notes in medical records so as to trigger the 60-day rule (Texas Workers' Compensation Commission Appeal No. 951959, decided January 3, 1996) and a carrier is required to react to injuries covered in medical reports and dispute them timely if it contests compensability. Texas Workers' Compensation Commission Appeal No. 94798, decided July 26, 1994. In this case, the initial medical records not only did not show a CTS injury, they discounted CTS and it was not until September 1998 that CTS was diagnosed and set forth in a medical report. Under such circumstances, the application of waiver on the basis that the carrier was on sufficient notice of a CTS injury from the medical reports in February 1998 is not supported by the evidence. A carrier is entitled to adequate notice of the injury (CTS in this case) it is to dispute. Texas Workers' Compensation Commission Appeal No. 94904, decided August 25, 1994.

The determination that the carrier waived the right to contest compensability of the claimed CTS injury by not contesting compensability within 60 days of being notified of the CTS injury is reversed. We hold that under the circumstances of this case, the carrier did not waive the right to contest the compensability of the CTS injury. We affirm the remaining findings, conclusions and the decision and order of the hearing officer.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Alan C. Ernst
Appeals Judge