APPEAL NO. 990679

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On March 9, 1999, a contested case hearing (CCH) was held. With respect to the issues before him, the hearing officer determined that the respondent's (claimant) spinal tumor is an ordinary disease of life and not the result of claimant's compensable (low back) injury of _____ (all dates are 1998 unless otherwise noted); that claimant has disability from December 8th and continuing through the date of the CCH; that the appellant (carrier) did not timely contest compensability of the spinal tumor; and that there was no newly discovered evidence, with carrier being liable for benefits of the whole injury, including the spinal tumor. No appeal has been taken on the issues that the spinal tumor was not part of the compensable injury and disability; therefore, the hearing officer's decision on those issues has become final. *See* Section 410.169.

Carrier appeals the findings concerning the failure to timely contest compensability of the spinal tumor and the wording, or rewording, of the issue. Carrier contends that an MRI, alone, does not provide the elements of written notice to the carrier required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1 (Rule 124.1). Carrier requests that we reverse the hearing officer's decision on that issue and render a decision in its favor. The file does not contain a response from the claimant.

DECISION

Affirmed.

It is undisputed that claimant, a truck driver, sustained a compensable back (spine) injury on _____, when claimant fell backwards off a ladder or trailer onto some tires. Claimant was taken to a doctor and a lumbosacral spine x-ray series, taken on _____, was essentially normal (with "[b]enign spina bifida occulta" noted at L5). Progress notes of Dr. G dated June 19th and July 17th noted continued back complaints with a diagnosis of "[f]racture of sacrum." Claimant continued to complain of pain and a lumbar spine MRI was performed on September 3rd, which showed a "large mass . . . intradural mass." Dr. C, the radiologist, opined that the mass "is certainly compatible with being a primary tumor . . . ." Physical therapy was discontinued and claimant was referred back to Dr. G. In a note dated September 4th, Dr. G noted a call from a radiologist who said that "[claimant] had a spinal cord tumor." Dr. G commented that he told claimant, "I didn't think it was related to his Workers Comp Injury but I wasn't totally positive that it might be a bruise or contusion . . . ." Dr. G referred claimant to a neurosurgeon.

Carrier acknowledged receiving the MRI on September 11th, but contends that it does not comply with Rule 124.1 because it does not inform the carrier of the identity of the employer, the date of injury and facts showing compensability. Although carrier contends that the MRI did not fairly inform it that claimant contended the tumor was part of the compensable injury, the hearing officer could consider the circumstances surrounding claimant's referral for the MRI--a compensable injury, continued complaints of back pain,

and a diagnosis of a fractured sacrum, which led Dr. G, the treating doctor, to order an MRI, which disclosed a mass or tumor. Claimant was specifically referred for an MRI because of his compensable lumbar spine injury.

Claimant was subsequently seen by Dr. Z, who, in a report dated October 20th, referred to notes of Dr. P, where Dr. P apparently said "the tumor [was] most likely congenital." Dr. Z recommended that the tumor be excised as soon as possible. Carrier apparently contends that it first received written notice that this tumor was claimed to be work related by Dr. Z's report. The second opinion spinal surgery process was initiated. Dr. D, apparently carrier's independent medical examination doctor, opined in a report dated November 6th, that "it is not medically probable" that the tumor was related to the compensable fall. Carrier, in a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) filed November 12th, disputed compensability of the tumor based on Dr. Z's October 20th report. Claimant had surgery for the tumor removal on December 8th. Dr. P, in a report dated December 8th, agrees that although the tumor is "most likely a benign tumor," "surgical intervention is required." In a report dated December 18th, Dr. G remarked:

> This patient was seen by me for an acute lumbosacral strain and, during the work up, we found that he had a spinal cord tumor. The acute lumbosacral strain did not cause the spinal cord tumor but the injury did aggravate the situation to where he started having symptoms. The acute lumobsacral strain, in my opinion, was the approximate cause of his having to be off work this period of time and did exaggerate the situation to the point where he is now having to have the spinal cord tumor removed.

In a progress note dated February 26, 1999, Dr. G notes that claimant continues to have pain, that the "tumor surgery in his spine hasn't helped his symptoms at all" and that claimant needs "further work up."

The hearing officer commented that although there was no credible evidence that the tumor was causally related to the injury, cancer was a concern and that claimant "went through the Commission's [Texas Workers' Compensation Commission] spinal surgery process" without dispute by the carrier and that carrier was found liable for the tumor removal surgery. The hearing officer went on to comment:

> The spinal tumor is an ordinary disease of life, and not part of the compensable injury. The Claimant did not know the tumor was not part of the injury. He went through the spinal surgery process without a dispute of compensability from the Carrier. It is clear the Carrier was fairly informed of the tumor by the MRI on September 11, 1998. Due diligence on [the] part of the Carrier should have prompted a timely dispute of the compensability of the tumor. Failure to timely dispute the compensability of the spinal tumor results in Carrier being liable for workers' compensation benefits arising from the entire injury, including the tumor.

Carrier appealed certain of the findings of fact and conclusions of law, contending that the hearing officer incorrectly applied Section 409.021 and Rule 124.1. The requirement for the carrier to dispute compensability is found in Section 409.021 and the rules that implement that section are Rules 124.1 - 124.6. The carrier may get notice from the employer, the Commission, or "any other written document which fairly informs the insurance carrier of the name of the injured employee, the identity of the employer, the approximate date of injury, and facts showing compensability." Rule 124.1. *See* Texas Workers' Compensation Commission Appeal No. 93120, decided April 2, 1993. Carrier contends that it "accepted compensability of a lumbar injury" and that the "dispute was an extent of injury issue." Carrier argues that it "timely contested the compensability of the tumor, not the compensability of the claim," and that the issue tried "was whether the tumor was part of the compensable injury to the lumbar spine." Frankly, we fail to follow carrier's reasoning. The hearing officer found that the tumor was not part of the compensable injury (the extent-of-injury issue) but that carrier had failed to timely contest the compensability of the tumor until 62 days after it received written notice through the MRI results on September 11th. We agree that Rule 124.1 can be applicable to an extent-of-injury issue. Carrier contends that the hearing officer was "incorrect in holding that the MRI was written notice to the Carrier pursuant to Rule 124.1" because that "document only fulfills one of the four requirements for written notice pursuant to Rule 124.1(a)(3), the claimant's name." Rule 124.1(a)(3) provides that any other notification, regardless of source, which fairly informs the carrier of the name of the injured employee, the identity of the employer, the date of injury and facts showing compensability can provide written notice. As we noted earlier, carrier certainly had notice of the injury, that claimant had continued unresolved back complaints, that Dr. G had diagnosed a fractured sacrum and that claimant was sent for an MRI as a further diagnostic test for the compensable injury. That test showed a tumor which, at that time, was unknown to be benign or malignant, caused by the fall or not, and that the doctors recommended removal. The carrier had 60 days to investigate and dispute compensability of the tumor as it related to the compensable injury. As we noted previously, all the information required by Rule 124.1 was available to the carrier in connection with the referral for the MRI and carrier cannot now complain that all of that information was not repeated on the MRI report when clearly the MRI was ordered as a diagnostic test for the compensable low back injury.

Carrier cites Texas Workers' Compensation Commission Appeal No. 980204, decided March 19, 1998, for the proposition "that an MRI standing alone was insufficient as written notice of an extension of the injury to additional areas of the body." First, we believe that to be an overreading of Appeal No. 980204 and, secondly, it is factually entirely distinguishable from this case. In Appeal No. 980204, the hearing officer found that the employee's compensable right arm injury did not extend to a neck injury, but that carrier did not timely dispute the neck injury after a cervical MRI. The Appeals Panel, in Appeal No. 980204, discussed and distinguished Texas Workers' Compensation Commission Appeal No. 961090, decided July 22, 1996, which we believe is more similar to the instant case than Appeal No. 980204, *supra.* In Appeal No. 980204, there was a compensable arm injury with a question of whether another body part, the neck, was an extension of the injury. In Appeal No. 961090, *supra*, the employee sustained a compensable electric shock injury and lumbar and cervical MRIs showed herniation, which the carrier in that case did

not timely dispute. In affirming that the MRI reports put the carrier on notice that lumbar and cervical disc problems were being asserted as part of the compensable injury, we wrote:

> Unless the claimant's injury at least arguably included some lumbar and cervical disc derangement, then there would have been no need to conduct lumbar or cervical MRIs as part of the claimant's work-up for the electric shock injury or to provide these reports to the carrier . . . these reports were sufficient to put the carrier on notice that cervical and lumbar disc problems were asserted to be included in the claimant's injury.

In the instant case, the MRI was clearly a work-up for claimant's compensable low back injury and complaints. In Appeal No. 980204, *supra,* there was never a contention that the lumbar and cervical spine were part of the compensable right arm injury. We also point out that Appeal No. 980204 was a remand for the hearing officer to make findings about when the carrier, in that case, disputed the written notification of a compensable neck injury and that decision also contained a lengthy and strong dissent. We hold that Appeal No. 980204 is not controlling in this case.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Judy L. Stephens
Appeals Judge