

APPEAL NO. 990732

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 respondent (claimant) sustained a compensable right elbow injury (occupational disease) with a date of injury of _____, and with disability beginning on June 22, 1997, and ending on June 3, 1998. Appellant (carrier) asserts that claimant's right arm problems are the result of an ordinary disease of life or stem from his (prior date of injury), compensable injury. In addition, carrier points to medical evidence which says that claimant's arthritis was not caused by his work in 1996. The appeals file does not contain a reply from claimant.

DECISION

We affirm.

Claimant worked for (employer) since 1989. He described his work as changing tires, removing tires from rims, installing batteries, etc. Claimant was also the claimant in Texas Workers' Compensation Commission Appeal No. 971907, decided October 22, 1997 (Unpublished), which affirmed a determination that claimant's (prior date of injury) compensable injury to his neck, right shoulder, and right arm did not extend to his low back.

Claimant herein testified that after his September 1995 lumbar surgery he returned to work in November 1996 for employer. (Other evidence indicates that he returned to work on October 28, 1996.) Claimant further testified that he worked with his hands changing tires, etc., about six hours each day. He said that his 1995 injury to the neck caused him to feel numbness from his shoulder to his fingers when he raised his hand or turned his neck. According to claimant, his doctor told him that his arm numbness was caused by the problem with his neck. After his return to work in 1996, his right elbow became swollen and his arms hurt after working (lifting tires and working with tools). When claimant reported this to Dr. Y, who had operated on his low back, that doctor referred him to Dr. M. After seeing Dr. M on _____, claimant began seeing Dr. G, who operated on claimant's right elbow on June 24, 1997. Claimant said that he was able to work until the time of surgery but has been off work "since the operation to now," adding that Dr. G had released him to work with restrictions but employer has not put him to work, he said, because the work involves tasks beyond his restrictions. Claimant said he was told by employer that he could return when "totally cured." In questions from the hearing officer, claimant restated that he was off work since the surgery "till today's date."

In November 1996, just after claimant returned to work after his 1995 lumbar surgery, the Texas Workers' Compensation Commission (Commission) notified claimant that Dr. Y had provided an impairment rating (IR) of eight percent (Dr. Y's Report of Medical Evaluation (TWCC-69) appears to indicate that this eight percent was based on the lumbar surgery, which Appeal No. 971907, *supra*, later agreed was not compensable.

The question, as stated by the carrier on appeal, was not whether claimant had an elbow problem, but whether it stemmed from the 1995 injury which involved a compensable neck and right arm injury, whether it was an ordinary disease of life, or whether it was an injury occurring after claimant returned to work in 1996.

The records do not show that Dr. Y provided any opinion regarding the elbow. Claimant's Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) for the 1995 injury referred to neck pain from a particular day's work and thereafter having neck pain extending to the right shoulder, arm, and hand, with numbness in the right arm. Claimant's TWCC-41 dated February 3, 1997, said he had a right shoulder and right elbow injury from installing tires, etc., which caused pain in his right arm and elbow, with the elbow "now" swollen and "can't straighten fully"; a date of injury of _____, was given.

Dr. M stated in his December 19, 1996, letter that claimant "has been having problems with his right upper extremity for several months." The lumbar surgery was mentioned, and Dr. M said, "he has noted since going back, he has had pain in his elbow," adding that claimant could not straighten it. X-rays were said to show osteoarthritis of the radial head. Dr. M's impression was, "traumatic arthritis, secondary to extensive use of the arm and elbow. I believe this is an on-the-job injury of long standing." A fact finder provided only this report would most reasonably conclude that Dr. M's reference to problems for "several months" and "long standing" on-the-job injury predated claimant's return to work in October/November 1996, since which he had worked less than two months at the time he saw Dr. M.

Dr. G, who Dr. M apparently referred claimant to see, stated, before he performed ulnar/humeral arthroplasty in June 1997, that claimant had "an acute onset of right elbow pain and swelling" in _____ while working. In March 1998, after the surgery of June 1997, Dr. G said that claimant had "no associated ulnar nerve problems with the right elbow" when he had an "initial onset of symptoms from arthritis of the elbow" from an "episode in _____." The statements of Dr. G could reasonably be interpreted as descriptive of a single event causing pain rather than a repetitive trauma injury.

The Commission appointed Dr. C in April 1998 to provide an opinion as to whether claimant sustained a repetitive physical trauma injury at work on or about January 10, 1997. (The reason for the January date is not clear.) Dr. C examined claimant on April 27, 1998, and referred to a history of "increasing pain and discomfort of his right elbow after using impact wrenches and hammers while changing tires." His impression was "post traumatic degenerative arthritis right elbow status post debridement." He further said that the "episode at [employer] at the end of 1996 was not the 'cause of his arthritis,' but his use of the hammer . . . has certainly been a aggravating influence on the elbow"

While Dr. C does not say that the hammer use, etc., occurred in 1996 after claimant returned to work, he did not state that the aggravating work was conducted in 1995, either.

Dr. C does appear to be addressing "an episode in _____." The hearing officer made a finding of fact that Dr. M, Dr. G and Dr. C all said that the claimant's elbow condition "was aggravated by claimant's work activities." This finding is sufficiently supported by the evidence, but it only addresses the carrier's appeal in regard to an ordinary disease of life (while arthritis could be an ordinary disease of life, an aggravation of that ordinary disease from work activities may be a compensable injury). There is no finding of fact that the "work activities" that were "aggravating" occurred in _____ as opposed to 1995 when the right arm was also part of a compensable injury.

The hearing officer, however, did find that the date of injury was _____, -by reciting that "claimant knew or should have known that his right elbow condition may be related to his employment" on that date. We point out that in this case, the evidence supports an implied finding of fact that the aggravating work activities occurred in November and _____. Had the claimant merely learned a correct diagnosis in _____ relative to his arm condition that had resulted from the 1995 compensable injury, we would question whether a new injury occurred. The finding of fact that claimant's condition was aggravated by his work activities, coupled with the implied finding of fact that these work activities took place in November and _____, sufficiently support the conclusion of law that claimant sustained a compensable right elbow injury with a date of injury of _____.

Claimant testified that he could not work or was not allowed to work by employer from the time of his elbow surgery in June 1997 to the present time. The medical records support that testimony, indicating that claimant has a permanent weight restriction. The hearing officer did not state why she ended disability on June 3, 1998, after beginning it on June 22, 1997, but claimant did not appeal any dates involved in the disability determination.

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

Tommy W. Lueders
Appeals Judge