APPEAL NO. 990964

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On April 15, 1999, a hearing on remand was scheduled but did not take place. This case was remanded by Texas Workers' Compensation Commission Appeal No. 990155, decided March 10, 1999. The hearing officer on remand (hearing officer) found that respondent (claimant) did not injure her neck or thoracic spine at work in _____; she concluded that claimant's neck and thoracic injuries were caused by a car wreck in July 1998; she also concluded that the appellant (carrier) did not contest compensability of the neck and thoracic injuries but had "no obligation to contest compensability." She determined that there was no disability. Claimant did not appeal. Carrier appealed the determination that it did not contest compensability within 60 days.

DECISION

We affirm.

We point out that no appeal was made to that part of the decision on remand which said that carrier had no obligation to contest compensability; we do not comment on any part of the decision that is not before us on appeal.

The hearing officer on remand did change a finding of fact that addressed notice to carrier of injury to the cervical and thoracic spine, to a degree. Whereas, Finding of Fact No. 9 in the initial decision said that carrier was "fairly informed . . . on or about March 31, 1998, when it could reasonably have received the medical records of [Dr. K]," Finding of Fact No. 10, on remand, said "[t]he carrier received written notice . . . on or about March 31, 1998, when it could reasonably have received the medical records of [Dr. K]." Carrier, on appeal, states that none of Dr. K's medical documents in the record were shown by date stamp to have been received by carrier or by evidence that any was mailed on a particular day to the carrier. Carrier then states that such evidence would not be found sufficient to support a finding of notice to a claimant in a case involving a Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)) matter in which 90 days is provided for a party to dispute an initial impairment rating. Carrier did not question the adequacy of Finding of Fact No. 10 itself, or whether it stated that carrier did receive written notice.

It is true that no records of Dr. K contain a date stamp of carrier and that no testimony recited any information as to mailing of such records to the carrier. We believe, however, that in this case a reasonable inference may be made based on carrier's July 8, 1998, letter to Dr. K which refers to services performed by Dr. K for claimant which began on "3/09/98." Carrier states the "diagnosis" is "mid back strain." Carrier in this letter objects to "continuation of chiropractic services . . . for diagnoses of neck sprain . . . ." Carrier then states "there has been no information received as asked for, including objective chiropractic initial evaluation and most recent progress report." (Emphasis added.) The carrier concludes by saying preauthorization was denied on July 7, 1998.

Conclusions that may be reasonably reached from this letter include that carrier has not received the "most recent" progress report, which, together with its statement that it had not received an "objective chiropractic initial evaluation," leads to a reasonable conclusion that carrier did receive the initial progress report. Carrier's reference to Dr. K's services having begun on "3-09-98" provides information that is only contained in the initial medical report Dr. K made on March 15, 1998; his reports of May 20, 1998, and July 8, 1998, do not refer to the March 9, 1998, date. In addition, carrier's statement that it had previously asked for added information indicates that it had the information in the March 15, 1998, initial medical report long enough to question it, to ask Dr. K for it, to then allow a reasonable time for reply, and then to prepare a communication to Dr. K that said carrier, as of July 7, 1998, had not received the information it asked for so was not authorizing "continuation of chiropractic services."

With the parties stipulating that a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) was filed with the Texas Workers' Compensation Commission on August 27, 1998, the same date that the form was prepared, carrier would have to receive written notice of injury no later than June 27, 1998, or else it would comply with the time limit imposed in Section 409.021. The initial report of Dr. K stated claimant's name, her employer, the date of injury, and gave claimant's history of picking up a box of copy paper and "felt a sharp pain in the low back and in her neck and shoulders. The condition continued to worsen. On 3-9-98 patient complains of midback pain, neck pain, low back pain . . . ." The March 15, 1998, report of claimant's treatment on March 9, 1998, contains sufficient facts to meet the written notice requirements of Rule 124.1. With carrier on July 7, 1998, acknowledging the facts set forth in the above paragraph, the determination that it had written notice over 60 days prior to disputing on August 27, 1998, is sufficiently supported by the evidence and inferences that may be reasonably made therefrom.

Finding that the determination appealed by the carrier is sufficiently supported by the evidence, that determination is affirmed.

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge