

APPEAL NO. 991051

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 April 14, 1999. The issues at the CCH were whether the compensable injury sustained by the appellant (claimant) on \_\_\_\_\_, extended to an injury to the low back, and whether the respondent (carrier) waived the right to contest compensability by not contesting timely. The hearing officer found that the claimant's injury did not extend to the low back and that the carrier did not waive the right to contest compensability. The claimant appeals a number of the hearing officer's findings of fact, pointing to evidence and her assessment thereof which she urges shows that her injury extended to her low back and that the carrier did not timely contest after being put on notice of a low back injury. The carrier responds that there is sufficient evidence to support the decision of the hearing officer and asks that it be affirmed.

DECISION

Affirmed.

The claimant testified that she was injured on \_\_\_\_\_, in her job, which included carrying boxes of computer paper weighing 40 to 50 pounds. She stated that her injury was a gradual onset of the position she had and the ergonomically incorrect work environment. While it is not entirely clear whether or not the injury related to a specific incident, the parties stipulated that the carrier accepted liability for an \_\_\_\_\_, injury to claimant's cervical area and right shoulder. She reported to her supervisor that she was experiencing pain and listed complaints of pain in her cervical/shoulder area on forms that were sent to the carrier. She first saw Dr. S on November 4, 1994, and although she states she had complaints of cervical/scapular pain and mentioned lumbar pain, Dr. S's reports do not reflect any lumbar complaints or any diagnosis related to the lumbar area. She states she treated conservatively with Dr. S over the next year and some months but changed to Dr. SP in May 1996. Again, claimant states that in addition to cervical/scapular complaints she complained of pain in the lumbar area, although Dr. SP's diagnosis only related to cervical/shoulder area and eventually led to surgery in this area. Dr. SP testified that the reason the lumbar area was not a part of his diagnosis was because he was mainly interested in the cervical area. He acknowledged that he gave a subsequent impairment rating (IR) for the claimant in March 1997 which did not include the lumbar area, but he could not remember why. It was not until August 1998, over two years after beginning treatment of the claimant, that Dr. SP recommended treatment for the lumbar area.

It was brought out that there had been earlier IRs by a designated doctor and that while there had been disputes over the IRs, there was never any dispute concerning the IRs not including any rating for the lumbar area. Although there were some references to the lumbar area in several medical reports, a lumbar injury was not included in any diagnosis or otherwise related to the \_\_\_\_\_, injury, Dr. SP wrote an August 26, 1998, letter which stated the claimant had an increase in lumbar pain, and had lumbar trouble

since the date of injury of \_\_\_\_\_. The hearing officer found that this August 26, 1998, letter was the first report that sufficiently put the carrier on notice that a work-related lumbar injury was being claimed as a part of the \_\_\_\_\_, neck and shoulder injury.

The claimant appeals the determination that the carrier did not waive its right to contest compensability because it did not contest within 60 days of notice of a work-related lumbar injury. In claimant's view, the carrier was on notice from her first complaints of injury to her employer's health department and subsequent mention of the lumbar area in medical reports. Whether and when sufficient notice is given to trigger the 60 days to dispute is basically a question of fact for the hearing officer to resolve from the evidence before him. Clearly, a carrier has to be given notice of an injury and facts showing that it is work related. Texas Workers' Compensation Commission Appeal No. 981579, decided August 24, 1998; Texas Workers' Compensation Commission Appeal No. 980177, decided March 13, 1998. The hearing officer found, and our review of the evidence leads us to agree, that the carrier was first placed on sufficient notice of a claimed low back injury by the correspondence from Dr. SP on August 26, 1998, and that the carrier timely disputed a low back injury on September 3, 1998. Texas Workers' Compensation Commission Appeal No. 92706, decided February 1, 1993.

The hearing officer also determined that the claimant did not sustain a compensable low back injury on \_\_\_\_\_. While the claimant testified that she complained of a low back injury from the beginning, contrary evidence was admitted, including the notices and forms filed at the time, the medical records and medical opinions over the course of the next two years, the diagnosis and treatment of the claimant, and the sheer passage of time until Dr. SP recommended testing and treatment for the lumbar area. The possible conflicts in the evidence were matters for the hearing officer to sort out and arrive at fact findings in the case. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Only were we to conclude, which we do not here, that his determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound reason to disturb the decision. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ); Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992.

Finding the evidence sufficient to sustain the decision and not finding any other prejudicial legal error, we affirm the decision and order.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Alan C. Ernst  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge