

## APPEAL NO. 991102

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 May 4, 1999. The issues at the CCH were whether the compensable injury of \_\_\_\_\_, is a producing cause of the respondent's (claimant) psychological (anxiety), left knee, and left hip problems; whether the appellant (carrier) waived the right to contest compensability of the extent of the claimed injury by not contesting compensability of psychological problems within 60 days of being notified of an alleged psychological injury; and whether the claimant is entitled to reimbursement of travel expenses for physical therapy done at the office of Dr. E from June 24, 1998, to October 29, 1998. The hearing officer determined that the compensable injury of \_\_\_\_\_, is a producing cause of the claimant's psychological (anxiety), left knee, and left hip problems; that the carrier waived the right to contest compensability of the extent of the claimed injury by not contesting compensability of psychological problems within 60 days of being notified of an alleged psychological injury; and that the claimant is entitled to reimbursement of travel expenses for physical therapy done at the office of Dr. E. The carrier appeals, urging the hearing officer's decision should be reversed because claimant's injury does not extend to a psychological condition, there is insufficient evidence to support the hearing officer's determination that the carrier waived its right to contest the psychological condition, the hearing officer abused his discretion in assuming facts not supported by the evidence and shifted the burden of proof to the carrier on the waiver issue, and the hearing officer erred in finding the claimant was entitled to reimbursement of travel expenses for physical therapy. The claimant responds that the decision is correct, supported by sufficient evidence, and should be affirmed. Not appealed is the determination of the hearing officer that the compensable injury of \_\_\_\_\_, is a producing cause of the claimant's left knee and left hip problems, and it has become final.

### DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that she fell at work and injured her left foot and ankle on \_\_\_\_\_. The claimant testified that she sought medical treatment with Dr. E on March 18, 1998. Dr. E prescribed pain medication, a removable cast, and physical therapy. According to the claimant, she told Dr. E's nurse that she was feeling depressed because she could not walk, cook, or care for her children, and she was seen by Mr. P, a licensed professional counselor, on March 18, 1998, in Dr. E's office. The claimant testified that she had surgery to her left ankle in \_\_\_\_\_ and July 1998, and wore a cast until October 1998. The claimant continued visits with Mr. P. Mr. P's notes on May 15, 1998, reflect the claimant was reporting significant anxiety due to the length of recovery, and he recommended a psychological evaluation. The carrier sent the claimant for a psychological evaluation with Dr. M on October 29, 1998. Dr. M concluded that "[the claimant] was suffering from a significant mental disorder, which is a direct result of her injury." The carrier presented the report of Dr. P, a peer review doctor, who was asked by the carrier to render an opinion as to whether the claimant's psychological presentation was related to

the compensable injury. Dr. P states that the claimant's "behavior and psychological presentation are highly suspect" and he questioned the claimant's motivation.

The claimant had the burden to prove that the compensable injury sustained by the claimant was a producing cause of her psychological condition. Whether she did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). The hearing officer resolved the conflicts in the evidence and determined that the claimant developed a psychological condition including anxiety due to her \_\_\_\_\_, injury. The hearing officer did not find Dr. P's report persuasive. When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We find there was sufficient evidence to support the determination of the hearing officer that the compensable injury of \_\_\_\_\_, is a producing cause of the claimant's psychological (anxiety) problem.

The carrier contends the hearing officer erred in determining that it waived the right to contest compensability of claimant's psychological condition. Unappealed is the hearing officer's finding that the carrier first contested or disputed the compensability of the claimant's psychological injury on (alleged date of injury). Section 409.021(c) provides that a carrier must contest compensability of an injury on or before the 60th day after it is notified of the injury. A notice of injury, for the purposes of starting the time period for contesting compensability, must be written and must fairly inform the carrier of the nature of the injury, the name of the injured employee, the identity of the employer, the approximate date of injury, and must state "facts showing compensability." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1(a) (Rule 124.1(a)). The writing may be from any source. Rule 124.1(a)(3). A carrier must timely contest the compensability of additional injuries. Texas Workers' Compensation Commission Appeal No. 950183, decided March 22, 1995. Written reports that consider whether a condition is work related may constitute written notice of injury under Rule 124.1, whether or not a concrete diagnosis is made. Texas Workers' Compensation Commission Appeal No. 950522, decided May 11, 1995. An employee who argues that a document is written notice of the compensability of a particular injury and that receipt of the document makes the carrier's contest of compensability untimely, has the burden of proving when the notice was received. Texas Workers' Compensation Commission Appeal No. 941398, decided December 1, 1994; Texas Workers' Compensation Commission Appeal No. 990307, decided March 24, 1999.

The hearing officer made the following finding of fact:

## FINDING OF FACT

8. Medical records dated as early as March 25, 1998 and March 18, 1998 mention psychological problems connected with Claimant's injury, and, if Carrier exercised normal, ordinary, and reasonable claims handling procedures in auditing Claimant's medical records and if Carrier is allowed a period of thirty days to receive and audit the medical records, these medical records would have provided written notice to Carrier by April 25, 1998, that Claimant had developed a psychological condition due to her \_\_\_\_\_ injury.

The medical records of Mr. P dated March 18, 1998, and March 25, 1998, do not contain a date stamp showing receipt by the carrier. The claimant did not present any evidence indicating when these documents were received by the carrier. The mere allegation the documents were received by the carrier is insufficient to meet the claimant's burden of proof. The affidavit of the carrier's handling adjuster indicates that the carrier first received notice of the claimant's psychological problems on May 15, 1998. This is consistent with Mr. P's noted recommendation for psychological evaluation on May 15, 1998, and the request for preauthorization which contains the date May 15, 1998, at the bottom of the page. We reverse the hearing officer's Finding of Fact No. 8, Conclusion of Law No. 4, and the decision and order, as being against the great weight and preponderance of the evidence. We render a new decision that the carrier received written notice of the claimant's psychological condition on May 15, 1998, and the carrier did not waive the right to contest compensability of the psychological problems because it contested compensability within 60 days of receiving written notice of an alleged psychological injury.

The carrier contends the hearing officer erred in finding the claimant was entitled to reimbursement of travel expenses for physical therapy. The claimant testified that she lives in City 1, and traveled in excess of 20 miles, one way, to receive physical therapy at Dr. E's office in City 2. The claimant testified that she asked Dr. E's office if it would be possible to receive physical therapy in City 1, but was told that she needed to treat at Dr. E's office because he was her treating doctor, and to avoid delays in paperwork. The affidavit of the carrier's handling adjuster indicates that during the week prior to June 22, 1998, she informed the claimant that she would no longer pay mileage for the claimant's trips for physical therapy because there were physical therapy facilities close to the claimant's residence in City 1.

Rule 134.6(a) provides in pertinent part that "[w]hen it becomes reasonably necessary for an injured employee to travel in order to obtain appropriate and necessary medical care for the injured employee's compensable injury, the reasonable cost shall be paid by the insurance carrier." The record indicates that the claimant began physical therapy at Dr. E's office on March 19, 1998, and was reimbursed for every visit thereafter through June 1998, when it was disputed by the carrier. The hearing officer believed the

claimant's testimony and found that it was reasonably necessary for the claimant to travel to Dr. E's office to receive physical therapy. We find sufficient evidence to support the hearing officer's decision; however, we note that the issue identified and litigated by the parties involved reimbursement for a specific time period, June 24, 1998, through October 29, 1998, and the hearing officer's determination was not limited to this specific period. We reform the hearing officer's Conclusion of Law No. 5 and decision to reflect that the claimant is entitled to reimbursement of travel expenses for physical therapy done at the office of Dr. E from June 24, 1998, to October 29, 1998.

We affirm the decision and order of the hearing officer that the compensable injury of \_\_\_\_\_, is a producing cause of the claimant's psychological (anxiety) problem, and that the claimant is entitled to reimbursement of travel expenses for physical therapy done at the office of Dr. E from June 24, 1998, to October 29, 1998, as reformed. We reverse and render a new decision that the carrier did not waive the right to contest compensability of the psychological problems because it contested compensability within 60 days of receiving written notice of an alleged psychological injury.

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Dorian E. Ramirez  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge