APPEAL NO. 991792

A contested case hearing was originally held on March 30, 1999, under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 990933, decided June 14, 1999, the Appeals Panel affirmed the determination of the hearing officer that the appellant (claimant) did not injure his back in the course and scope of his employment on Subsequent injury. It reversed the determinations that Dr. G December 22, 1997, report was the first written notice the respondent (carrier) received of a claimed back injury and timely contested the compensability of the claimed injury and remanded for the hearing officer to determine whether the medical report dated July 16, 1997, and stamped as being received by the carrier on Injury 1, put the carrier on notice of a work-related injury and whether the carrier timely contested the compensability of the claimed low back injury. The hearing officer was not required to hold another hearing, did not do so, and rendered another decision on July 22, 1999, in which he held that the report received by the carrier on July 5 (sic), 1997, did not put the carrier on notice of a work-related back injury and that the carrier is not liable for benefits. The claimant appealed, urged that those determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the carrier received notice of the claimed low back injury on Injury 1, and waived its right to dispute the back injury because it did not dispute the claimed injury within 60 days of having received written notice of it. The carrier responded, stated that the clerical error in the decision of the hearing officer should be corrected, urged that the decision of the hearing officer is not so against the great weight and preponderance of the evidence as to be manifestly unjust and wrong, and requested that it be affirmed as corrected.

DECISION

We reverse the decision of the hearing officer and render a decision that the carrier received written notice of the claimed low back injury on Injury 1; that the carrier did not dispute the claimed low back injury within 60 days of receiving written notice of that claimed low back injury; that the carrier waived its right to contest compensability of the claimed low back injury; and that the compensable injury sustained on Subsequent injury, includes a low back injury because the carrier waived the right to contest the compensability of the claimed low back injury.

The claimant was referred to physical therapy by the treating doctor. The Therapy-Initial Evaluation report received by the carrier on Injury 1, indicates that the claimant felt sharp pain in right lower back shooting to right groin; that a special test of the right lumbar quadrant was positive; that there was palpating pressure and pain at L2 and L3 on the right; that there was right groin pain secondary to lumbar injury at L1, L2, and L3; and that one of the goals was [illegible] lower back.

In his decision and order, the hearing officer states that the report does not specify the work-related genesis of such damage. The carrier previously had knowledge that the claimant sustained a hernia at work and, as the hearing officer pointed out in his statement of the evidence and discussion, the report received by the carrier on Injury 1, included the diagnosis of right inguinal hernia. The carrier was put on notice that the report concerned a work-related injury. The hearing officer also stated that the claimant had the burden to show notice to the carrier of damage to his back as opposed to back pain caused by the inguinal hernia. There is not a requirement that a notice of injury also include notice of damage to a part of the body as opposed to pain. If there was such a requirement, it would be met by the statement right groin pain secondary to lumbar injury at L1, L2, and L3. Section 409.021 uses the phrase "after the date on which an insurance carrier receives written notice of an injury." A report that includes "lumbar injury" puts the carrier on notice of an injury. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §124.1(a) (Rule 124.1(a)) is entitled written notice of injury and subsection (3) addresses written notice when no first report of injury has previously been received and does not apply since the carrier had received notice of a hernia injury. The determination that the report received by the carrier on Injury 1, did not put the carrier on notice of a work-related back injury is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust and is reversed. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); and In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We render a decision that the medical report dated July 16, 1997, and received by the carrier on Injury 1, put the carrier on notice of a claimed low back injury; that the carrier did not dispute the claimed low back injury within 60 days of having received written notice of the claimed low back injury; that the carrier waived the right to contest compensability of the claimed low back injury; and that the compensable injury sustained on Subsequent injury, includes a low back injury because the carrier waived the right to contest compensability of the claimed low back injury.

_____
Tommy W. Lueders
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge