

APPEAL NO. 000301

On January 13, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the CCH were: (1) whether appellant (carrier) waived the right to contest compensability of the allergy problems after August 28, 1998, by not timely contesting compensability; and (2) whether the compensable injury sustained on _____, is a producing cause of respondent's (claimant) current allergy problems after August 28, 1998. Carrier appeals the hearing officer's decision that it waived the right to contest compensability of the allergy problems after August 28, 1998. There is no appeal of the hearing officer's decision that the compensable injury sustained on _____, is not a producing cause of claimant's allergy problems after August 28, 1998. No response was received from claimant.

DECISION

Affirmed.

Claimant testified that, while she was working as a cashier, she was exposed for a period of about two weeks to metal-based paint fumes and dust from ceiling tiles that were being removed. It is undisputed that, as a result of that exposure, claimant sustained a compensable injury and that the date of injury was _____. Dr. S, claimant's treating doctor until January 1999, referred claimant to Dr. L, who, in February 1994, diagnosed claimant as having probable chemical bronchitis after exposure at the workplace. Dr. S also referred claimant to Dr. SE, who noted in July 1994 that claimant's allergies are not caused by her workplace injury but that her allergies now need to be treated because of her sinuses and inability to clear mucus. Dr. SE performed two sinus surgeries on claimant. Dr. S wrote in February 1998 that claimant's work-place injury caused her chemical bronchitis and chemical sinusitis and noted her allergic reactions. Allergen tests were done in March 1998, which indicated various allergies. Dr. N, the designated doctor, reported in July 1998 that claimant has sinobronchial syndrome secondary to chemical exposure and that claimant reached maximum medical improvement on February 3, 1996, with a five percent impairment rating. Dr. K examined claimant at carrier's request on August 28, 1998, and he reported that, at that time, claimant had minimal continued chronic rhinitis/sinusitis and that her continued symptoms are likely related to personal health exposures. On December 4, 1998, carrier asked Dr. K if he felt that claimant's current allergy problems are directly related to her work-related incident of _____, and Dr. K answered "no" and that he thought claimant was "back to baseline." On February 24, 1999, Dr. SE wrote that he had operated on claimant for sinusitis that was caused by chemical sinusitis; that claimant would not need her allergies treated if she did not have the chemical bronchitis; and that if claimant did not have the work-related injury to her respiratory mucosa, then she would not need to have the allergy treatment and she would not have needed to have the surgery. In March 1999, Dr. K wrote that at the time of his examination of claimant, claimant was back to baseline of her workplace-aggravated personal nasosinus allergies.

There is no appeal of the hearing officer's decision that the compensable injury sustained on _____, is not a producing cause of claimant's allergy problems after August 28, 1998.

It is not disputed on appeal that carrier knew no later than September 24, 1998, that claimant's allergy problems after August 28, 1998, were being claimed as part of her compensable injury. Carrier does not dispute the hearing officer's determinations that carrier knew that Dr. S was relating claimant's current allergies to the original injury, that that is why carrier sent claimant to Dr. K, and that carrier received Dr. K's report of August 28, 1998, on September 24, 1998. In a Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21) dated January 19, 1999, carrier wrote that it was disputing any and all future "medical" related to the claim; that a peer review noted that claimant's current medical problems with her allergies are unrelated to her incident that occurred at work and are related to an ordinary disease of life; and that Dr. K had noted that any and all of claimant's problems are not related to her work-related injury, that claimant has a background of serious personal health allergies, and that claimant's current condition is back to baseline, as it was prior to the work-related incident. In a TWCC-21 dated May 13, 1999, carrier wrote that it disputes any and all "medical that is not reasonable and necessary and related to the original injury," and then repeated what it had stated in the January 19, 1999, TWCC-21 about the peer review and Dr. K's report.

Section 409.021(c) provides that, if an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability, and that the initiation of payments by an insurance carrier does not affect the right of the insurance carrier to continue to investigate or deny the compensability of an injury during the 60-day period. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6, which was in effect during the relevant time periods, provided, in part, in subsection (c) that, if a carrier disputes compensability after payment of benefits has begun, the carrier shall file a notice of refused or disputed claim, on or before the 60th day after the carrier received written notice of the injury, and subsection (d) provided:

Payment, or denial of payment, of a medical bill shall be made in accordance with the Act, sec. 4.68 [now TEX. LAB. CODE § 408.027], and not under this section. However, a carrier that contends that no medical benefits are due because an injury is not compensable under the Act shall file a notice of refused or disputed claim set forth in this section no later than the 60th day after receipt of written notice of injury.

At the CCH, carrier contended that there should be no CCH because the issues before the hearing officer involved a medical dispute question, that it was not disputing compensability of the injury, and that it was disputing whether claimant's current treatment is reasonable and necessary as related to her injury. Carrier appeals the hearing officer's finding that carrier did not timely contest the compensability of the claimed allergy problems after August 28, 1998, and the hearing officer's conclusion that carrier has waived the right

to contest compensability of the allergy problems after August 28, 1998. Carrier contends that the hearing officer improperly considered the claim to be a question of compensability rather than a medical dispute; that carrier denied payment of treatment for claimant's allergies after August 28, 1998, on the basis that the allergies were not a result of the compensable injury; and that the hearing officer did not have jurisdiction because the matter was one for medical dispute review as to whether claimant's treatment for allergies after August 28, 1998, was reasonable and necessary to treat the original injury.

While carrier's TWCC-21s do dispute "medical," they also clearly indicate that carrier is taking the position that claimant's allergies are unrelated to her compensable injury of _____. Carrier's appeal states that it denied payment of treatment for claimant's allergies after August 28, 1998, on the basis that the allergies were not a result of the compensable injury. It can reasonably be inferred that the matter before the hearing officer involved an extent-of-injury question and, although the hearing officer ruled against claimant on the issue of whether her compensable injury is a producing cause of her current allergy problems after August 28, 1998, he decided that carrier had not timely contested compensability of the claimed allergy problems and that carrier waived the right to contest compensability of the allergy problems after August 28, 1998. See Texas Workers' Compensation Commission Appeal No. 992763, decided January 24, 2000, and Texas Workers' Compensation Commission Appeal No. 93491, decided August 2, 1993. We do not agree that the hearing officer lacked jurisdiction over the matters before him. We also do not agree with the carrier's assertion that it has been denied the right to dispute the reasonableness and necessity of medical treatment, because, although claimant's allergies are part of the compensable injury due to carrier's failure to timely contest compensability, carrier is not precluded from disputing what is or what is not reasonable and necessary medical treatment for the compensable allergy condition. We conclude that the hearing officer's decision on the waiver issue is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge