

APPEAL NO. 000387

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 January 26, 2000. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; whether the appellant (carrier) sufficiently contested the compensability of the injury; and whether the claimant had disability. The hearing officer determined that the claimant did not sustain an injury to her lower back in the course and scope of her employment, that the dispute filed by the carrier failed to contain a full and complete statement of the grounds for refusal to pay benefits, and thus the injury was compensable as a matter of law, and that the claimant had disability from May 10, 1999, through September 21, 1999, as a result of her back injury. Carrier specifically does not appeal any finding or conclusion that the claimant did not sustain an injury in the course and scope of her employment. Since there is no appeal on this finding of no injury in the course and scope of employment on \_\_\_\_\_, the finding is final and will not be further addressed. Carrier appeals the determination that its controversion was not sufficient to contest compensability, urging that the hearing officer erred as a matter of law. No response is on file from the claimant.

DECISION

Reversed and a new decision rendered.

The Decision and Order of the hearing officer sets forth the evidence adequately and fairly and it will only be summarized here. Claimant testified that she sustained a back injury when she tripped over a stool at work on \_\_\_\_\_. She did not think she was injured, did not report the matter, and did not experience pain until the next day. She went to her doctor on April 12, 1999, because of flu and also to seek treatment for her back, although she did not have any medical records of this visit. She stated her last day of work was May 10, 1999, and that, pursuant to advice, she went to a chiropractor on May 26, 1999. She also went to a clinic on May 24, 1999, the records of which indicate essentially normal findings but a lumbosacral strain was diagnosed. When she visited the chiropractor on May 26, 1999, she was taken off work and treated for bilateral lumbar pain.

Claimant's supervisor stated that at the end of April he learned from claimant that she had a back problem from a fall which required surgery but that she did not want to have surgery. He indicated he had advanced her money in early March 1999 to go to the doctor because of flu. From this, the hearing officer inferred that claimant saw her doctor in early March for a back problem and before the alleged date of injury. The evidence also showed that the claimant did not work on \_\_\_\_\_. When claimant went to the clinic on May 24, 1999, the employer was called about workers' compensation coverage for the claimant. An Employee's notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) from claimant dated May 25, 1999, only indicated that claimant had bumped a shelf causing her to fall on a step stool with the nature of injury to be determined. The

carrier filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) on June 1, 1999, stating the reason for refusing or disputing the claim:

Based on Carrier's investigation, it is the Carrier's position that this employee's current lost time, if any, and need for medical treatment are solely due to a pre-existing condition for which she has had previous lost time.

The hearing officer determined that the carrier's dispute is not sufficient to dispute compensability. Rather, the hearing officer concluded the wording conveys an intent to dispute disability and medical benefits. Carrier urges that this determination was erroneous and we agree. Indeed, it appears that the basis for the hearing officer's determination of no injury in the course and scope of employment was the very position advanced by the carrier in denying liability. In setting forth guidance on notices of refused or disputed claim, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6 (Rule 124.6), it is stated that a full and complete statement of the grounds for refusal or disputing should be set forth and not just generalities or conclusions. In this regard, in an early case, the Appeals Panel held that "magic words" are not required to satisfy the requirements of Rule 124.6 and that we look to a fair reading of the reasons stated in determining whether the notice is sufficient. Texas Workers' Compensation Commission Appeal No. 93326, decided June 10, 1993. We also have stated that the issue is whether, read as a whole, the reasons listed by the carrier would be a defense to compensability that could prevail at a later proceeding. Texas Workers' Compensation Commission Appeal No. 93533, decided August 9, 1993. In Texas Workers' Compensation Commission Appeal No. 950703, decided June 20, 1995, we reversed and rendered a new decision where a dispute of compensability was held by the hearing officer to be insufficient. In that case, the carrier disputed any ongoing disability as a result of a work-related injury, that notice of a specific incident was not received in 30 days, that medical records do not release the claimant from work, and that the back problems were chronic conditions and a result of factors outside the job. Although a bit lengthier, the reasoning is somewhat analogous to the case under review. Other cases where the Appeals Panel has reversed and rendered holding notice sufficient to dispute or contest a compensable injury include Texas Workers' Compensation Commission Appeal No. 971846, decided October 27, 1997, and cases cited therein, and Texas Workers' Compensation Commission Appeal No. 960191, decided March 8, 1996, where the carrier disputed the claim in its entirety. See *also* Texas Workers' Compensation Commission Appeal No. 93302, decided June 2, 1993, where we upheld as sufficient a notice that stated "Clmts medical condition is not work related. Alleged injury was reported on 9/27/91. Our investigation continues."

We conclude, based on our precedent and employing a reasonable reading of the language used by the carrier under the particulars of this case in disputing or refusing the compensability of this claim, that the language was sufficient and in substantial compliance with Rule 124.6. We therefore reverse the finding and conclusion that the carrier did not sufficiently contest compensability on or before the 60th day after being notified of the injury. We render a new finding and conclusion that the notice of refused or disputed claim

filed by the carrier on June 1, 1999, was sufficient to contest compensability of the asserted back injury of \_\_\_\_\_. The decision and order are reversed and a new decision rendered that the claimant did not sustain a compensable injury on \_\_\_\_\_; that the carrier sufficiently contested compensability and is not liable for workers' compensation benefits; and that the claimant, not having a compensable injury, did not sustain any period of disability.

Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

Tommy W. Lueders  
Appeals Judge

Dorian E. Ramirez  
Appeals Judge