APPEAL NO. 000591

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 February 15, 2000. The issues at the CCH were whether the respondent=s (claimant) compensable injury extends to include an injury for a left scrotal hematoma, traumatic left epididymitis with traumatic hydrocele and/or hematocele, hematuria, and epididymal orchitis; whether the appellant (carrier) waived the right to contest compensability of the hematuria by not contesting compensability within 60 days of being notified of the injury or by not sufficiently contesting compensability within 60 days of being notified of the injury; and whether claimant had disability from January 14, 1999, through the date of the CCH. Pursuant to the agreement of the parties, the hearing officer determined that claimant=s compensable injury included an injury for a left scrotal hematoma, traumatic left epididymitis with traumatic hydrocele and/or hematocele, and epididymal orchitis. She further determined that carrier waived the right to contest the compensability of the hematuria by not timely contesting compensability; and that claimant had disability from January 14, 1999, through the date of the hearing. The carrier appeals, contending error in the finding of waiver and in the disability determination. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed in part and reversed and rendered in part.

On _____, the claimant was struck in the left[1] testicle by a flying projectile. He noticed immediate pain and swelling and was prescribed antibiotics. Consistent with the pre-hearing agreement of the parties, the carrier accepted as part of the compensable injury the hematoma, epididymitis, and orchitis. *See* Finding of Fact No. 3. The hearing officer then found that the "preponderance of the evidence did not establish to a reasonable degree of medical probability that Claimant's hematuria was causally related to the original compensable injury of _____." Finding of Fact No. 25. This finding was not appealed. The hearing officer considered the hematuria compensable because it was not timely disputed (Conclusions of Law No. 2 and No. 3).

Section 409.021(c) generally requires a carrier to dispute the compensability of an "injury" by the 60th day after being notified of the injury. We have held, consistent with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 124.1(a) (Rule 124.1(a)) that the 60 days is triggered by the receipt of written notice. Texas Workers' Compensation Commission Appeal No. 952232, decided February 8, 1996. We have also held that a carrier is required to timely dispute subsequent or follow-on injuries. Texas Workers' Compensation Commission Appeal No. 92437, decided September 28, 1992. *But see* Rule 124.3(c) effective March 13, 2000. In

[1]We note that some medical records refer, presumably incorrectly, to the right testicle.

the case we now consider, Dr. A, a referral urologist, examined the claimant on October 22, 1998, and included the following in his report under the category of DIFFERENTIAL DIAGNOSIS: "Includes resolving traumatic epididymal orchitis and microscopic hematuria resulting form possible occult urinary tract infection." The carrier acknowledged receiving this report on or about October 28, 1998. In response, it authorized several more tests and consultations, which among other things ruled out bladder cancer or stones. On March 5, 1999, Dr. A wrote that he did not believe that the blood in the urine was attributable to the injury on _____. The carrier disputed the compensability of the hematuria on March 25, 1999.

The hearing officer found that "[d]espite the fact that it contained a differential diagnosis, [Dr. A's] October 22, 1998 report put Carrier on notice that Claimant's hematuria was under consideration as possibly related to Claimant's compensable injury" (Finding of Fact No. 15); that the carrier was "required to dispute compensability of the hematuria" (Finding of Fact No. 16); and that the "medical records are consistent with the identification of hematuria as a diagnosis rather than as an identification of a symptom." Finding of Fact No. 19. The carrier appeals these and other findings, contending essentially that the hematuria was only a symptom of another primary condition, not an injury in itself, and that the hematuria did not have to be separately disputed. Section 401.011(26) defines an injury as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." We have stressed in the past, as the plain language of Section 409.021(c) states, that a carrier is required to dispute injuries, not signs or symptoms of an injury. Thus, in Texas Workers' Compensation Commission Appeal No. 961919, decided November 13, 1996 (Unpublished), we noted that the carrier is required to dispute injuries, not symptoms. In Appeal No. 952232, *supra*, we noted that in cases holding that a written notice of an additional injury is sufficient to trigger the 60-day contest requirement, the written notice "contained some information indicating that the additional condition was an ›injury,‹ *see generally* [Texas Workers' Compensation Commission] Appeal No. 950183, *supra* [decided March 22, 1995], or that it was ›an aspect of,‹ or was ›related to‹ the original compensable injury." *See also* Texas Workers' Compensation Commission Appeal No. 970675, decided June 2, 1997; and Texas Workers' Compensation Commission Appeal No. 971653, decided October 2, 1997.

Hematuria, or blood in the urine, as the medical evidence reveals, is secondary to or a sign of a primary injury, but is not itself an injury. The October 22, 1998, report of Dr. A does not refer to a source or cause of the hematuria, other than possibly to the left testicle/scrotum, which the carrier accepted as a compensable injury. To require that the carrier, under these circumstances, had to dispute the hematuria or risk being liable for whatever caused the hematuria is not a reasonable construction of Section 409.021(c). For these reasons, we reverse the determinations of the hearing officer to the extent that they can be construed as findings that the hematuria is an injury as defined by the 1989 Act and her conclusions of law that the carrier waived the right to contest the compensability of the hematuria (Conclusion of Law No. 3) and that the hematuria was part of the compensable injury (Conclusion of Law No. 2). We render a decision that the hematuria is not an injury under the 1989 Act, that the carrier did not waive the right to dispute the compensability of the cause or causes of the hematuria,

and that the hematuria was not part of the compensable injury. We affirm the determinations that the compensable injury did not extend to or cause the hematuria.

A final issue at the CCH was whether the claimant had disability from January 14, 1999, through the date of the CCH, as contended. Section 401.011(16) defines disability as the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The claimant had the burden of proving disability and whether disability exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The parties stipulated that the claimant's average weekly wage was $242.32. The claimant returned to work at some point after the injury. He testified that he could not return to his preinjury production job, but was given some other light-duty job in which he earned less than his preinjury wage. There was also in evidence numerous pay records of the claimant over a lengthy period of time. Unfortunately, there was no other testimony to shed light on these pay records and it is difficult to surmise from them what they are actually saying. In any case, the hearing officer found the claimant credible, and determined, among other appealed findings on this issue, that "[f]rom January 14, 1999, through the date of the CCH, Claimant had decreased earnings due to his inability to work›production=" (Finding of Fact No. 36) and that "Claimant's inability to work›production= was due to his compensable injury." Finding of Fact No. 37. The carrier argues on appeal that the disability determination is contrary to the great weight of the evidence because the hearing officer based it exclusively on the hematuria, which was not part of the compensable injury. We too question how the hematuria in itself could be the only cause of disability. However, in this case, Finding of Fact No. 37 clearly attributed the reduced wages by virtue of the inability to work "production" to the "compensable injury." We cannot conclude from the decision and order, that the disability determination was not premised on the compensable injury itself and not just on the hematuria. For this reason, we find the evidence sufficient and affirm the disability determination. 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 would, nonetheless, note that this affirmance in no way addresses or resolves the question of the amount of temporary income benefits (TIBs) owed the claimant. Disputes over the amount of TIBs can be resolved by the parties based on a sound interpretation of the claimant's pay records.

For the foregoing reasons, we affirm the disability determination and the determination on the extent of injury. We reverse the determinations that the hematuria was a compensable injury in itself and that the carrier failed to timely dispute such an injury, and render a decision that the hematuria was not an injury and that the carrier did not waive the right to dispute the cause or causes of the hematuria.

Alan C. Ernst
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge