

APPEAL NO. 000734

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 March 15, 2000. The hearing officer resolved the two disputed issues by determining that the appellant-s (claimant) compensable injury sustained on _____, does not extend to bilateral shoulder pain, bilateral carpal tunnel syndrome (CTS), thoracic, bladder, vaginal tear, bilateral hip, left eye ache, bilateral feet swelling, bilateral heel numbness, depression, bilateral shins, bilateral calves, bilateral ankles, bilateral legs, bilateral arms, lungs stomach, head, headaches, left knee degeneration and left patella tear and right knee degeneration and right lateral meniscus tear, chest pain, heart murmur, stress and inguinal lymphadenopathy; and that the respondent/cross-appellant (carrier) did not waive the right to contest compensability of the additional body parts. Claimant-s request for review, to which she has attached numerous medical records and other documents, generally asserts error in the hearing officer-s determinations. The carrier filed a response urging the sufficiency of the evidence to support the challenged determinations.

The carrier filed an appeal, which is conditioned upon claimant-s filing an appeal. The carrier-s appeal notes that the hearing officer denied the carrier-s request to add an issue as to whether the Texas Workers= Compensation Commission (Commission) has jurisdiction to consider claimant-s extent-of-injury issue on the ground that it was not timely requested. The carrier then asserts four points of error, to wit: (1) that claimant waived the extent-of-injury issue because it was necessarily decided when her impairment rating (IR) was determined; (2) that the Commission does not have jurisdiction to hear claimant-s extent-of-injury issue because it was necessarily decided when claimant-s IR was determined; (3) that the hearing officer erred in failing to add the jurisdictional issue because it was timely requested; and (4), in the alternative, that the hearing officer erred in not considering whether the extent-of-injury issue was waived because this issue was subsumed within the issues before the hearing officer.

The carrier responded to the claimant-s appeal. However, the file does not contain a response from claimant to the carrier-s cross-appeal.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury on _____.

By way of background, in claimant-s amended Employee-s Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), claimant stated that she slipped and fell at work on _____, and injured her back and that her injured body parts are her "tail bone and back." In evidence is the decision of the Appeals Panel in Texas Workers= Compensation Commission Appeal No. 980225, decided March 23, 1998

(Unpublished). In that case, where the disputed issue before another hearing officer was the IR to be assigned to claimant, the hearing officer, after receiving an IR from the designated doctor for the lumbar spine, asked the designated doctor to consider the cervical spine as part of the compensable injury and rate it, and the designated doctor then added to his rating for the lumbar spine an additional seven percent impairment for the cervical spine and determined that claimant's whole body IR is 15%. On appeal, the carrier contended, among other things, that an extent-of-injury issue was not before the hearing officer. However, the Appeals Panel, citing Texas Workers' Compensation Commission Appeal No. 961067, decided July 10, 1996, affirmed the hearing officer's determination that claimant's IR is 15%. Also in evidence is a copy of the carrier's original petition filed against claimant in a state district court on April 28, 1998, which disputes the Appeals Panel decision with regard to the extent of injury (inclusion of the cervical spine) and seeks a judgement setting aside the Appeals Panel decision and assessing an IR of less than 15%.

Claimant testified that on _____, while working as a cook, she slipped on the wet kitchen floor, put her hands back to try to break her fall, and fell backwards onto her back with her right leg up and under the left leg. She said she was first seen for medical treatment by Dr. C, who diagnosed a tailbone or coccyx contusion and low back injury; that Dr. A became her treating doctor; and that later on Dr. G became her treating doctor. She also said that immediately after the fall she had "problems," apparently meaning pain, with her shoulders but that the carrier refused to authorize MRIs. She said that she later complained of tingling and numbness in her hands and arms and was diagnosed with CTS and that she believes it was caused by her effort to try to break her fall with her hands. She acknowledged that no doctor has told her the CTS was related to her fall. As for her thoracic spine, claimant said she obtained some medical records in 1999 reflecting that she had a fracture in that spinal region and that she relates it to her fall because all of her back was injured when she fell and because she has pain when raising her arms and has complained of that pain.

Claimant further testified that after the fall, she could not hold her urine and developed a bladder condition which she attributes to her fall. She indicated she was seen for that condition by Dr. W. Claimant further stated that she learned, again from some medical records she obtained in 1999, that she also had a vaginal tear. She said she relates this condition to her fall, that she was referred by Dr. W to Dr. GO for treatment of this condition, and that no doctor has told her this problem was related to her fall. Claimant also stated that her bilateral hip condition was mentioned by both Dr. A and Dr. G. As for her left eye ache condition, claimant testified that, after reviewing a medical book, she feels this condition is related to her compensable injury because a nerve runs from the thigh up through the neck and to the eye region and that nerve was injured in the fall. She also said that her swollen and painful feet, heels, ankles, and legs are related to the compensable injury because, according to the medical book, the nerves from her injured back run to those body parts and because she also retains water. She acknowledged that no doctor has diagnosed these body parts. Claimant also testified that both knees were injured in the fall; that she was diagnosed with torn ligaments following MRIs; and that she believes that the degeneration of her knees is

attributable to insufficient blood supply which, she feels, is related to her fall. She also stated that she cannot raise her arms due to pain and that this condition is part of her "nerve damage syndrome" as are her headaches. Claimant also asserted that her stomach and lung problems were caused by an infection which came from the vaginal tear and from fragments of bone from her fractured coccyx. She did state that Dr. H did not relate her stomach problems to her fall.

Claimant further testified that she has both depression and anxiety which have resulted from the fall. During the hearing, claimant asked to add chest pain, heart murmur, stress, and inguinal lymphadenopathy (some lymph nodes under her arm) to the list of ailments she believes were caused by the fall and, there being no objection, these conditions were added.

The hearing officer's discussion of the evidence states, and we agree, that the medical and other documentary evidence claimant introduced is insufficient to support claimant's contentions that the pain and other symptoms she has experienced in all of the enumerated body parts are related to or resulted from her fall on _____. The hearing officer made a finding of fact to this effect which claimant disputes on appeal.

Claimant had the burden to prove that her compensable injury of _____, extended to and included all of the body parts and conditions she claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could consider not only the lack of medical evidence connecting the claimed body parts and/or conditions to her fall on _____, but also her testimony that when in 1999 she obtained various medical records, she went through them, identified certain medical conditions, and then, having acknowledged she had no medical training, reviewed a medical book in an effort to relate these body parts/conditions to her compensable slip and fall injury.

Concerning the carrier waiver issue, 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 carrier is notified of the injury, the carrier waives its right to contest compensability. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 124.1(a)(3) (Rule 124.1(a)(3)) provides, in part, that written notice of injury, as used in Section 409.021, consists of "any other communication, regardless of source, which fairly informs the carrier of the name of the injured

employee, the identity of the employer, the approximate date of the injury and information which asserts the injury is work related." Claimant introduced a voluminous amount of medical records comprising 41 of her 52 exhibits. However, she made no effort whatsoever at the hearing to identify any medical records or other documents which she contended complied with the requirements of Rule 124.1(a)(3) in providing the carrier with written notice of all of the additional body parts and conditions to which she was claiming her injury extended nor did she establish when such written notice was received by the carrier. The hearing officer found that the mention of pain to a body part or the mention of a new symptom in a medical report is insufficient to fairly inform or place the carrier on notice that claimant is claiming additional injuries that may be related to or be a direct result of the initial compensable injury. We are satisfied that this finding is not against the great weight of the evidence. The Appeals Panel stated the following in Texas Workers= Compensation Commission Appeal No. 980177, decided March 13, 1998:

[A] carrier is not required to go on a treasure hunt through medical records to find some reference to possible other symptoms or pain and thereby be held to be on notice that such pain reflects specific injuries outside of those specifically diagnosed and subsequently treated over a lengthy period of time.

Further, in Texas Workers= Compensation Commission Appeal No. 000713, decided May 17, 2000, the Appeals Panel held that the new Rule 124.3 applies to cases in which the CCH is convened after March 13, 2000, to address carrier waiver in the contest of an extent-of-injury question "because it precludes the Commission from imposing waiver after that date."

A carrier letter to the Commission, dated March 6, 2000, states that the carrier received the benefit review officer's report on February 28, 2000, and requests that an issue be added concerning the Commission's "jurisdiction" to consider the extent-of-injury issue, noting that at an earlier CCH on the IR issue, claimant presented an extent-of-injury issue (the neck) which the Appeal Panel later said was subsumed in the IR issue; that the carrier's appeal to the district court includes an issue of extent of injury; and therefore that the hearing officer does not have jurisdiction to consider an additional extent-of-injury issue. The carrier further stated that claimant has waived her right to assert a waiver issue as the waiver was not considered at the first CCH. We note that the Commission letter transmitting the benefit review conference (BRC) report to the parties is dated February 11, 2000. Pursuant to Rule 102.5(d), the BRC report is deemed to have been received on the first working day after the date it was placed in the carrier's Austin representative's box.

Also in evidence is a Commission Dispute Resolution Information System note of March 9, 2000, made by a Commission employee, which states that the Commission received a letter from the carrier's attorney stating why the carrier believes the Commission does not have jurisdiction on the "extent" issue and would like the issue of "jurisdiction" added to the CCH. Also in evidence is the Commission employee's e-mail of March 10, 2000, to the hearing officer advising him of the carrier's letter and its content. Rule 142.7(e) provides, in

part, that a party may request the hearing officer to include in the statement of disputes one or more disputes not identified as unresolved in the benefit review officer's report and that such request shall be made in writing and be sent to the Commission no later than 15 days before the hearing. Rule 142.7(e)(2) provides that an "unrepresented claimant" may request additional disputes be included in the statement of disputes by contacting the Commission in any manner no later than 15 days before the hearing.

The hearing officer denied the carrier's request at the hearing on the basis that it was not timely made. In its request for review, the carrier urges, among other things, that since it was not represented by counsel at the BRC, the "mandates of Rule 142.7(3)(1) [sic] do not apply" and that the carrier used "due diligence" to request the additional issue and provide the request to the claimant and the Commission.

We review the hearing officer's ruling denying the carrier's request to add the "jurisdiction" and claimant "waiver" issue to the statement of disputes for abuse of discretion, that is, whether the hearing officer acted without reference to any guiding principles. Texas Workers=Compensation Commission Appeal No. 92054, decided March 27, 1992; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We are satisfied that the ruling is not an abuse of discretion.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge