

APPEAL NO. 001254

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 May 1, 2000. The issue at the CCH was one of extent of injury: whether the claimant's compensable injury extended to her right wrist. A second issue concerning reimbursement for medical transportation costs was withdrawn.

The hearing officer found in favor of the claimant as to the extent of her injury including the right wrist. The hearing officer also tracked the wording of the issue which stated other parts of the body that were part of the compensable injury and were not in dispute. The claimant has consequently appealed, noting that the conceded compensable injury was not limited only to those body parts and urging that the finding of fact should be reformed to include all regions that the self-insured has accepted. The self-insured agrees that the hearing officer's decision does not limit the scope of the compensable injury and says that in essence the issue is "moot." The self-insured states that it disputed only the compensability of claimant's right wrist and has not disputed entitlement to the additional parts. However, the self-insured also responds that it would be improper for the first time on appeal to "raise issues for the first time that were not litigated." There is no appeal of the essential finding that the right wrist injury was part of the compensable injury.

DECISION

Affirmed as reformed.

The claimant worked as a substitute teacher for the self-insured, a school district, when she was assaulted by a disruptive student on _____, and fended off the attack. The claimant stated that the student in question was a fifth grader, was about 4 feet 5 inches tall, and weighed perhaps 140-150 pounds. The claimant sustained multiple injuries as a result of this attack which started as wrestling and struggling with the student. The claimant was then hit and kicked by the student as she attempted to keep him in his seat. At one point, the desk turned over and the student persisted in hitting at the claimant, throwing his shoes and a six- to seven-foot divider at the claimant, which hit the palm of her right hand. The student also threw a metal easel at the claimant which hit her right hand. The claimant said at the CCH that she did not fall.

The claimant was treated primarily by Dr. V but referred on October 11, 1999, to Dr. N for cervical and lumbar strain, traumatic chest injury, and posttraumatic right carpal tunnel syndrome (CTS). On November 1, 1999, Dr. N treated claimant with medication for cervical and lumbar conditions. Dr. N's report of November 29, 1999, referred to a cervical MRI as having been normal.

On January 20, 2000, Dr. M examined the claimant in a required medical examination. Dr. M found symptom magnification and questioned the objective severity of the claimant's injury.

On March 16, 2000, a benefit review conference (BRC) was held in which an issue was raised as to whether the right wrist was included in the injury. The wording of this issue was:

Did the claimant sustain a compensable injury to her right wrist in addition to both arms, left shoulder and cervical area on _____?

The articulation of the positions of both parties was that a right CTS either was, or was not, part of the injury.

After the BRC, sometime in April, both the adjuster and the attorney for the self-insured answered interrogatories propounded by the claimant. These were sworn to by the adjuster, under penalty of perjury. The adjuster stated that the BRC report had not yet been received. In answer to a question asking what body parts had been accepted by the self-insured as part of the injury, the self-insured stated:

Cervical, thoracic, lumbar, both shoulders and arms, left elbow and wrist, chest.

These body parts are all listed throughout the medical evidence in the record. Notable as explaining the issue between the parties was that some of the medical identified injury to the left wrist as opposed to the right. This included also the Report of Medical Evaluation (TWCC-69) completed by Dr. V on February 28, 2000, which stated a diagnosis of left wrist traumatic arthropathy. The self insured's cross-examination was directed at questions as to why mention of the right wrist was omitted from various medical records of Dr. V. In closing argument, the claimant's representative noted again that the body parts listed in the interrogatories were accepted. The self-insured's argument focused on the lack of objective evidence of injury to the right wrist or of any early connection of a right wrist injury to the incident.

During the CCH, the representative for the claimant asked her if the self-insured's response to the interrogatory was her understanding of what the carrier had accepted and she answered that it was, noting that the self-insured had not specifically mentioned the right wrist. In closing argument, the self-insured's attorney agreed that it had previously accepted compensability of other body parts, and specifically named the parts set out in its interrogatory.

In making her determination on the disputed right wrist, the hearing officer made no fact findings regarding undisputed aspects of the injury, but rendered a conclusion of law (and a decision statement) that said:

The claimant sustained a compensable injury to her right wrist in addition to both arms, left shoulder and cervical area on _____.

As we read the appeal and response, there is more *apparent* than *real*

disagreement between the parties as to the effect of the hearing officer's decision. The claimant plainly is concerned that the hearing officer's tracking of the literal wording of the issue will work in the future to narrow the scope of the accepted injury. The carrier agrees that the decision does not have that effect, but then argues that the claimant is attempting to expand "the issue." We do not agree that this is what the claimant seeks to do.

It is important to emphasize that an "issue" for purposes of the administrative hearings system refers to those aspects of a claim which are "disputed." See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 141.5(c), 141.7, and 142.7 (Rules 141.5(c), 141.7, and 142.7). It is a carrier's initial burden to dispute the compensability of an injury. Section 409.021. The self-insured in this case did that for the right wrist. It also clarified in its interrogatories and in statements at the CCH (as well as its response to the appeal) that the relationship of other parts of the body to the incident was not disputed and they were in fact previously accepted.

The fact that the wording of the BRC issue mentioned only some, but not all, parts of the accepted injury did not make undisputed parts of the injury part of the "issue." The essence of the dispute between the parties was the inclusion of the right CTS, not a description of undisputed injuries. The hearing officer's conclusion of law thus cannot be said to constitute an adjudication that the injury is thus limited and it does not have this effect.

For purposes of clarification, we reform the conclusion of law as follows: "The claimant sustained a compensable injury to her right wrist on _____, as part of her compensable injury." We caution that nothing in this decision limits the right of the carrier to raise disputes regarding the necessity, reasonableness, or cost of medical care. We also caution that the scope of the previously accepted compensable injury is not expanded or narrowed by this opinion.

Susan M. Kelley
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Thomas A. Knapp
Appeals Judge