

## APPEAL NO. 001763

A contested case hearing (CCH) was originally held on February 22, 2000, under the provisions of the Texas Workers' Compensation Act, TEX. LAB CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 000561, decided May 4, 2000, the Appeals Panel affirmed part of the decision of the hearing officer, reversed the part of the decision of the hearing officer that the respondent (carrier) timely contested injury to the spine other than at the C4-5 level, and remanded for the hearing officer to make findings of fact and conclusion of law to resolve the issue of whether the carrier timely contested the compensability of the claimed injury. The hearing officer held another CCH on June 26, 2000; heard arguments by the parties; and rendered another decision on July 21, 2000, in which he made a single finding of fact that:

Carrier did not receive written notice of that Claimant [appellant] asserted that the injury extended to degenerative disk disease and herniations from C3-4 through C7-T1 in addition to the compensable injury at C4-5 within 60 days prior to June 10, 1999.

and a conclusion of law that "[T]he compensable injury does not extend to degenerative disk disease and herniations from C3-4 through C7-T1 in addition to the compensable injury at C4-5." The claimant appealed; contended that an Employer's First Report of Injury or Illness (TWCC-1) dated April 6, 1999, and received by the carrier on that date is written notice to the carrier of the claimed extent of injury; urged that the determinations of the hearing officer are against the great weight of the evidence; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor. The carrier responded, urged that the evidence is sufficient to support the decision of the hearing officer, contended that it was not required to contest the compensability of the claimed injury, and requested that the decision of the hearing officer be affirmed.

## DECISION

We affirm.

The evidence concerning the issue determined on remand is summarized in Appeal No. 000561, *supra*. It is undisputed that the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) filed by the carrier is dated June 10, 1999. The record does not contain evidence as to when the operative report of Dr. M or the TWCC-1 dated April 5, 1999, stating herniated discs in the neck was received by the carrier. Considering the disputes and the evidence, the better practice would have been for the hearing officer to have made additional findings of fact relating to the receipt of the operative report and the TWCC-1 by the carrier and what the words concerning injury in the TWCC-1 put the carrier on notice of and a conclusion of law as to whether the carrier timely contested the compensability of the claimed injury to the spine other than at the C4-5 level. See Hypothetical No. 6-1 on pages 6-53 and 6-54 and comments concerning findings of fact and conclusions of law related to Hypothetical No. 6 on page 6-60 in 1

JOHN T. MONTFORD, *ET AL.*, A GUIDE TO TEXAS WORKERS' COMP REFORM (1991). But the finding of fact that the hearing officer made is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The carrier contended that it was not required to contest the compensability of the extent of the claimed injury under the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3) effective March 13, 2000. The Appeals Panel has stated that if a CCH was held on or after March 13, 2000, the carrier need not contest the compensability of the extent of an injury even if the 60th day after receiving notice of a claimed extent of injury was before March 13, 2000. Texas Workers' Compensation Commission Appeal No. 001356, decided July 26, 2000. In the case before us, the first CCH at which the evidence related to the appealed issue was received was held prior to March 13, 2000, on February 22, 2000.

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

CONCURRING OPINION:

I concur and write separately to note the language in the preamble to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3), discussed in Texas Workers' Compensation Commission Appeal No. 001356, decided July 26, 2000.

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Judy L. Stephens  
Appeals Judge