

APPEAL NO. 002312

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 September 5, 2000. The issues at the CCH were whether four specific conditions were the result of the appellant/cross-respondent's (claimant) compensable injury of _____: bilateral carpal tunnel syndrome (CTS), lumbar strain, sternum problems, and right shoulder problems (presumably the current condition), and whether she had disability from her compensable injury for the period from November 3 through 22, 1999.

The hearing officer held that the claimant's bilateral CTS and lumbar strain were direct and natural results of her compensable injury. There are no specific findings on the other two regions contained in the issue. The hearing officer further found that the claimant had disability resulting from her compensable injury for the period from November 3 through 22, 1999.

Both parties have appealed. The claimant appeals and complains that no findings were made on her right shoulder or sternum injuries. The respondent/cross-appellant (carrier) responds that the evidence would not support a determination that the claimant's right shoulder or sternum complaints were related to her admitted neck injury. The carrier indicates that an implied determination against these conditions was made, but if the Appeals Panel disagrees, the hearing officer should be asked to make that decision. The carrier appeals and argues that the lumbar strain and bilateral CTS injuries are not supported in the evidence as part of the compensable injury. The carrier also remarks that there is an apparent omission of the other two regions, and addresses those by arguing that there is likewise insufficient evidence to sustain even the existence of an injury to the right shoulder or sternum, let alone a compensable one. The carrier further argues that the disputed periods of disability reflect the time that the claimant was under a full-duty release from her previous treating doctor and she had the ability to work during this time. The claimant points out facts in favor of the extent of injury determined by the hearing officer.

DECISION

We affirm the determination as to the lumbar and bilateral CTS, and reverse and remand for consideration and further findings on the other conditions listed in the disputed issue.

The hearing officer's decision gives a thorough summary of the facts. We will incorporate this and briefly summarize here. The claimant was employed as a bus driver by (employer). She is left-hand dominant. On _____, the claimant was making a run from a larger city down to a border town and was given a bus with a defective hydraulic door. The claimant described how she had to forcefully open the door by exerting her body weight and pulling and pushing. When she arrived back in the larger city, she could no

longer do this and had to summon help from another driver to push the door from the outside.

The claimant began having discomfort that started initially at the back of her rib cage. She said that she had pain when breathing, and the pain gradually "worked its way up." The claimant sought medical treatment from a medical clinic when she returned to the larger city. At that point, her pain was in her thoracic spine and she believed objective tests were performed of that area. She also recalled telling the doctor that she could not lift her right arm. The claimant said part of her breathing pain was centered in her front chest bone. The claimant said that when her pain, especially her chest pain, did not resolve, she sought treatment from her family doctor. She said that her doctor probably indicated that this was nonwork-related because she told him that the insurance company would not accept it as work-related. Her doctor diagnosed "acute costochondritis." (In Dorland's Illustrated Medical Dictionary, pgs. 385 and 320, respectively (28th edition 1994, "costa" refers to the rib cage and "chondritis" means an inflammation of cartilage.)

The claimant saw at least two doctors when she went to the medical clinic, and agreed that one of them, Dr. B, who was her initial treating doctor, released her back to work. She said that she was not able to return to work, however, or go off the pain medication as Dr. B had advised. The claimant said that she was told by the carrier doctor, Dr. W, that both the lumbar and CTS were part of her injury. The claimant changed her treating doctor to Dr. G and saw him on November 23, 1999, when she was again taken off work.

The claimant said that Dr. G recommended cervical surgery, which had been approved through the second-opinion process. At the time of the CCH, the claimant had not yet had the surgery.

According to records in evidence that are legible, the claimant was treated at the medical clinic by Dr. B, initially, for thoracic sprain. On November 2, 1999, continuing pain in the upper chest area is noted.

Dr. G initially opined that cervical pain could express as thoracic pain, and he believed the claimant's syndrome to reflect cervical disc disease. Objective medical tests include a lumbar MRI, which indicated degenerative changes and bulges at three levels, a normal right shoulder MRI, and a positive EMG for the right side (only the right side was done). Dr. G said he tended to agree that the CTS was work-related.

The report of Dr. W generated May 24, 2000, diagnosed lumbosacral strain, cervical herniations, possible right shoulder impingement, and possible CTS. Dr. W stated that he believed all were related to the work-related injury. He stated that the claimant could do no work of any kind.

The release signed by Dr. B on October 26, 1999, was not unrestricted; it limited the claimant to 20 pounds lifting and recommended for primarily seated work. Part of the

claimant's job description included a need to lift up to 100 pounds. Dr. B further stated on that day that the claimant could not return to her previous occupation. A note signed on November 2, 1999, stated that the claimant should discontinue medications and return to unrestricted work. It is not clear what changed in a week's time.

The claimant agreed that no doctor had diagnosed an injury to her sternum specifically. However, this was one area where she said she experienced pain right after her problems with the door.

The hearing officer appears to have made findings on only two of the conditions presented for adjudication, lumbar strain and bilateral CTS. We have reviewed the record and there is sufficient support in the medical and testimonial evidence for including these two regions as part of the compensable injury. The hearing officer's decision should not be set aside on these matters absent a great weight and preponderance of evidence to the contrary. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the hearing officer's decision that the claimant's bilateral CTS and lumbar strain are the results of the compensable injury sustained on _____.

But absent from the discussion or findings of fact and conclusions of law are the asserted right shoulder and sternum injuries. When these conditions are expressly made part of the injury in the issue reported from the benefit review conference, we cannot imply a finding that they were expressly included or excluded by the hearing officer from the scope of the compensable injury in this case because the decision neither supports nor negates these conditions as caused by or naturally resulting from the compensable injury. The parties are entitled to the hearing officer's express ruling on these matters. Accordingly, we reverse and remand for further findings on the alleged sternum and right shoulder injuries.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings,

pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge