

APPEAL NO. 020874
FILED MAY 31, 2002

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 20, 2002. The disputed issues were:

1. Was the [respondent's (self-insured)] contest of compensability based on newly discovered evidence that could not reasonably have been discovered at an earlier date, thus allowing the [self-insured] to reopen the issue of compensability?
2. What is the date of injury?
3. Does the compensable injury extend to sarcoidosis and major depressive disorder?
4. Did the [appellant] Claimant sustain a compensable injury in the form of an occupational disease?

The hearing officer made the following findings:

CONCLUSIONS OF LAW

2. The Self-Insured's contest of compensability of the claimed occupational disease was based on newly discovered evidence that could not reasonably have been discovered at an earlier date.
3. The Self-Insured's contest of compensability of the August 5, 1998 exacerbation of sarcoidosis was not based on newly discovered evidence that could not reasonably have been discovered at an earlier date and was waived, as determined by the Appeals Panel in No. 992526 [Texas Workers' Compensation Commission Appeal No. 992526, decided December 30, 1999].
4. There is no occupational disease, so there is no date of injury of an occupational disease.
5. The date of injury of the exacerbation of sarcoidosis is _____.

6. The compensable injury, to wit the exacerbation of sarcoidosis, does not extend to the disease of sarcoidosis itself or major depressive disorder.
7. The Claimant did not sustain a compensable injury in the form of an occupational disease.

The claimant states that she "is appealing with evidence." The self-insured responds, urging affirmance.

DECISION

Affirmed in part; reversed and rendered in part.

To have an understanding of this case requires some knowledge of the procedural history. On September 29, 1999, another hearing officer (hearing officer 1) determined that the self-insured timely contested compensability based on newly discovered evidence, which allowed the self-insured to reopen the issue of compensability, and that the claimant had not sustained a compensable injury on _____. The Appeals Panel in Appeal No. 992526, *supra*,¹ reversed hearing officer 1's decision that the self-insured could reopen the compensability of an _____, exacerbation of sarcoidosis and rendered a decision that the self-insured had accepted compensability of the exacerbation of sarcoidosis. The Appeals Panel also remanded the case for further development of the evidence (which the hearing officer was unable to do because of the claimant's poor recollection of dates and sequence of events) and a determination "whether the claimant sustained a compensable injury on (or about) _____, which must be rendered also in accordance with our determination of the reopening issue on exacerbation of sarcoidosis." Hearing officer 1, in a decision on remand, dated April 20, 2000, with the agreement of the parties, stated, "that the remaining remanded issue be sent back to the lowest level of dispute resolution, to consider and attempt to resolve the issue of extent [of] injury." Another benefit review conference (BRC) was held on January 22, 2001.

We note that prior to the CCH in this case there was an attempt to reach an agreement on the record with the self-insured appearing to accept liability for the sarcoidosis but not for the major depressive disorder. The hearing officer explained the proposed agreement to the claimant and asked the self-insured if it would accept the sarcoidosis and then the CCH could just be about whether the compensable injury extended to the major depressive disorder. The parties were unable to agree and the CCH was on all the disputed issues. We note that the claimant's testimony, particularly regarding dates, was very vague and in many cases unresponsive to the question.

¹Appeal No. 992526 sets out the facts in some detail and we will not repeat them here.

The self-insured argued, and the hearing officer seemed to agree, that while the self-insured was liable for the exacerbation of the sarcoidosis by a specific event on _____, by reason of an untimely contest of compensability as found in Appeal No. 992526, it was not liable for an occupational disease in the form of the underlying lung condition of sarcoidosis. The hearing officer appears to separate the specific event of exacerbation of sarcoidosis from the underlying condition. In Appeal No. 992526, the Appeals Panel held that it was "unable to render a decision on the compensable injury issue . . . because a waiver on the matter of an episodic aggravation of sarcoidosis does not appear to wholly resolve the global issue of whether the claimant sustained 'a compensable injury' on _____."

Section 401.011(34) defines an "occupational disease" as a disease arising out of and in the course and scope of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. The term includes a disease or infection that naturally results from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease. The claimant claims an occupational disease through the exposure of hairdressing chemicals, to include sodium hydroxide. The hearing officer comments:

The credible evidence fails to support Claimant's sarcoidosis as an occupational disease. There is no credible medical evidence supplying a causal link between alleged repeated exposures to poorly- or unidentified chemicals at work and the sarcoidosis. If the sarcoidosis were an occupational disease, the date of injury would be on or about _____, which the evidence indicates is the date Claimant first knew or reasonably should have known the sarcoidosis may have been related to her employment. However, since there is no occupational disease, there is no date of injury of an occupational disease.

We hold that the hearing officer's comment is supported by the evidence and adequately supports his determinations regarding an occupational disease and the date of injury (or explanation for the lack thereof).

The hearing officer found that the self-insured's contest of compensability was timely concerning the alleged occupational disease of sarcoidosis. Citing "Carrier exhibit 3," which is a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated February 9, 2001, the self-insured asserts that at the January 22, 2001, BRC the claimant alleged a compensable injury in the form of an occupational disease with a date of injury of "_____." At the BRC, the claimant's position was that the self-insured "accepted sarcoidosis as the compensable injury." The self-insured's position was that it "did not have the medical information needed to dispute the claim within 60 days." The hearing officer found in Finding of Fact No. 9 that

Claimant first contended she had sustained an occupational disease, apart from the exacerbation of sarcoidosis, at the [BRC] held January 22, 2001, and the Self-Insured disputed the compensability of this claimed injury in a TWCC-21 filed February 9, 2001.

While it is true that most of the medical records and documentary evidence indicate an _____ or _____, date of injury, medical evidence, including a report dated June 6, 1999, from Dr. H, indicates that as early as _____, the claimant had been diagnosed with sarcoidosis, that skin lesions "proved to be compatible with sarcoidosis," and that the claimant was advised not to be exposed to the hairstylist environment "which can exacerbate her respiratory symptoms." In fact, Appeal No. 992526, *supra*, in 1999 noted that the claimant's testimony in September 1999 "alluded to her belief that she had developed an occupational disease." See Appeal No. 992526 for a discussion of what amounts to newly discovered evidence which could not reasonably have been discovered earlier. We hold that the hearing officer's determination that the self-insured was first advised of the alleged occupational disease of sarcoidosis at the January 22, 2001, BRC and therefore timely contested in the TWCC-21 dated February 9, 2001, to be against the great weight and preponderance of the evidence. We reverse the hearing officer's decision on this issue and render a new decision that the self-insured's contest of compensability was not based on newly discovered evidence (the January 22, 2001, BRC) that could not reasonably have been discovered earlier.

Regarding the extent-of-injury issue of whether the compensable injury "to wit the exacerbation of sarcoidosis" extended to a major depressive disorder, the hearing officer clearly referenced a report from Dr. T dated October 13, 2001. Dr. T gave his diagnosis (major depressive disorder), the symptoms, treatment, and medication, and concluded that "[t]hese depressive symptoms appear to have developed secondary to [claimant's] ability to work, financial pressures, and chronic medical problems." The hearing officer commented that the report does not "establish a causal link or nexus between the exacerbation of sarcoidosis and Claimant's depression." We hold the hearing officer's finding on this issue to be supported by the evidence.

Attached to the claimant's "appeal" are what appear to be some computer-generated psychiatric treatment notes for treatment between October 29, 2001, and February 26, 2002. There is no indication why those notes could not have been offered at the March 20, 2002, CCH. Also attached to the claimant's appeal is a report dated April 2, 2002, from Dr. J, an internal medicine specialist, who discusses the use of the medication which the claimant was taking as the cause of her depression. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993. To constitute "newly discovered evidence," the evidence would need to have come to the appellant's knowledge since the hearing; it must not have been due to lack of diligence that it came to her knowledge no sooner; it must not be cumulative; and it must be so material it would probably produce a different result upon a

new hearing. See Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence does not meet the requirements for newly discovered evidence and will not be considered on appeal.

In summary, we affirm the hearing officer's determinations on the date of injury issue, the extent-of-injury issue, and that the claimant did not sustain a compensable injury in the form of an occupational disease. We reverse the hearing officer's decision that the self-insured's contest of compensability of the claimed occupational disease was based on newly discovered evidence that could not reasonably have been discovered earlier and render a new decision that the self-insured's contest of compensability of the claimed occupational disease was not based on newly discovered evidence (the January 22, 2001, BRC where the claimant alleged a 1996 date of injury for the sarcoidosis) that could not reasonably have been discovered earlier. The claimant's sarcoidosis is compensable, as not having been timely contested. The claimant's compensable injury does not extend to the major depressive disorder.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge