

APPEAL NO. 033368
FILED FEBRUARY 19, 2004

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 December 3, 2003. The hearing officer determined that the compensable (date of injury), injury extends "to include right carpal tunnel syndrome [CTS] and an injury to the left wrist after _____."

The appellant (carrier) appeals, basically arguing that the respondent's (claimant) current condition is the result of an August 2002 "enhancement, acceleration or worsening" (i.e. a new aggravation injury) and that the claimant failed "to prove that the 1999 injury included injury to the left wrist after _____." The file does not contain a response from the claimant.

DECISION

Affirmed.

This case is framed as an extent-of-injury issue, but actually is a question of whether the claimant sustained a new injury in August 2002, which would relieve the carrier from further liability for the 1999 injury.

The parties stipulated that the "Claimant sustained a compensable repetitive trauma injury to her bilateral wrists, cervical spine and left ulnar nerve entrapment on (date of injury)." (Emphasis added.) The claimant had left ulnar nerve surgery in November 1999. The claimant was diagnosed with bilateral CTS based on EMG studies, but in 1999 the treating doctor opined that surgery was not necessary. The claimant was found to be at maximum medical improvement (MMI) on March 28, 2000. The claimant returned to work in March 2000, and sustained a right knee injury in August 2000. The claimant had arthroscopic knee surgery in March 2001, and was placed at MMI for that injury in July 2001, and returned to work in August 2001. The claimant received no other medical attention until she sustained another repetitive trauma injury on _____. Another EMG study was performed, which the hearing officer commented "was identical to the EMG results from the previous study in 2000" (for the 1999 compensable injury). On December 19, 2002, the claimant's treating doctor performed a right CTS release procedure. Apparently the carrier for the 2002 injury has disputed payment of right CTS release and treatment to the left wrist.

Nearly the entire CCH involved whether there was "an enhancement, acceleration or worsening" (i.e. an aggravation injury) of the claimant's preexisting right CTS injury on _____. As the hearing officer comments "[t]here is an abundance of conflicting evidence." Probably the best, and most comprehensive, report is from the carrier's required medical examination (RME) doctor found in Claimant's Exhibit No. 1. Both parties cite that report to support their positions.

We believe that the question is not so much whether or not the claimant suffered a new injury in August 2002, but rather whether any new injury is the sole cause of the claimant's current condition. The Appeals Panel has long held that to prove a subsequent injury is the sole cause of the claimant's current complaints, the burden is on the carrier to prove that the claimant's subsequent injury is the sole contributing factor to the claimant's current condition or disability. Texas Workers' Compensation Commission Appeal No. 94280, decided April 22, 1994; see *also* Texas Workers' Compensation Commission Appeal No. 93864, decided November 10, 1993, and decisions and cases cited therein. This is so because an injury is compensable even though aggravated by a subsequently occurring injury or condition. See Guzman v. Maryland Casualty Co., 130 Tex. 62, 107 S.W.2d 356 (1937); Hardware Mutual Casualty Co. v. Westbrooks, 511 S.W.2d 406 (Tex. Civ. App.-Amarillo 1974, writ); Texas Workers' Compensation Commission Appeal No. 91038, decided November 14, 1991; Texas Workers' Compensation Commission Appeal No. 91085A, decided January 3, 1992; Texas Workers' Compensation Commission Appeal No. 92692, decided February 12, 1993. It is possible for an injured worker to suffer the effects of two injuries to the same body part at the same time. See *also* Appeal No. 93864, *supra*.

In this case the parties stipulated that the claimant sustained a compensable bilateral wrist injury in February 1999, and diagnostic studies done at the time found mild bilateral CTS. The fact that the claimant may have sustained another bilateral wrist injury in August 2002 does not relieve the carrier of liability for the 1999 injury unless it proves the August 2002 injury is the sole cause of the claimant's current condition (the right CTS and unspecified left wrist injury). We certainly reject the carrier's argument asking the Appeals Panel to hold that the claimant "no longer suffered the effects of the 1999 injury" after _____. The carrier has clearly not proven that the _____, injury was the sole cause of the claimant's current condition.

As for the left wrist, the carrier contends that the claimant "had the burden to prove that the 1999 injury included injury to the left wrist after _____." The claimant has done so by the stipulation of a compensable bilateral wrist injury on (date of injury). Nothing in that stipulation says that the injury resolved on _____, or at any other time. The carrier goes on to state that the claimant "presented no evidence regarding her left wrist after _____." We disagree. The claimant has the stipulation of a compensable bilateral wrist injury in 1999. It is the carrier's burden to show that that injury resolved or was no longer effective after _____. The carrier could do so by showing that the _____, injury is the sole cause of the claimant's current condition, but it failed to do so.

Accordingly, we hold that the hearing officer's decision is supported by sufficient evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The hearing officer's decision and order are affirmed for the reasons stated.

The true corporate name of the insurance carrier is **NATIONAL FIRE INSURANCE COMPANY OF NEWARK** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge