

APPEAL NO. 041650
FILED AUGUST 30, 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 June 10, 2004. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) compensable injury of _____, extends to and includes the diagnosed conditions of chest wall pain and esophageal reflux/spasms. The appellant (carrier) appealed the hearing officer's decision. No response was received from the claimant.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable injury to the L4-5 and L5-S1 levels of her lumbar spine. As a result of that injury, the claimant underwent an Intra Discal Electro Thermal (IDET) treatment procedure and was prescribed a lumbar brace to wear for two months following that procedure. The claimant wore the lumbar brace. On the day the brace was to be removed, she went to a hospital where she stayed overnight and was diagnosed by a doctor as having chest wall pain and "reflux" secondary to wearing the lumbar brace. The carrier obtained the opinions of two peer review doctors that the claimant's medical bill for the overnight stay at the hospital was not related to her compensable injury or any treatment for the injury. The carrier then filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) asserting that the claimant's compensable injury does not extend to include, among other things, the diagnoses of chest pain or esophageal reflux.

The claimant's surgeon wrote to the carrier stating that "The brace is quite snug and could potentially cause reflux causing esophagitis and chest and abdominal pain secondary to that." He also stated that "I have had other patients experience this same symptom related to reflux and wearing a very tight lumbar brace." The surgeon concluded his letter by stating that since the cause of the hospitalization was ultimately determined to be related to the brace the claimant was wearing for her post IDET care, he felt that the hospital admission was directly related to her work injury and should be considered reasonable and necessary and covered under the claimant's workers' compensation claim.

The disputed issue at the benefit review conference (BRC), and the issue agreed to by the parties at the CCH, was whether the compensable injury of _____, extends to include the diagnosed conditions of chest wall pain and esophageal reflux/spasms. The benefit review officer (BRO) noted in his BRC report that "This is probably a medical review issue as to whether this treatment was reasonable and necessary to cure or relieve the effects of the compensable injury, however, the carrier

has filed a TWCC-21 disputing the compensability of these conditions and medical review will not consider the dispute.”

The hearing officer decided that the compensable injury of _____, extends to and includes the diagnosed conditions of chest wall pain and esophageal reflux/spasms. The carrier asserts that pain alone is not an injury and that the evidence does not support the hearing officer’s decision. In Texas Workers’ Compensation Commission Appeal No. 020952, decided May 29, 2002, the Appeals Panel cautioned against an overreading of the statement that pain is not an injury and observed that pain can be the symptom or indicator of an injury. In the instant case, it is undisputed that the claimant sustained a compensable injury to her lumbar spine for which she underwent a lumbar procedure and was prescribed a lumbar brace. There is medical evidence that the claimant’s wearing of the prescribed lumbar brace resulted in the claimed disputed conditions of chest wall pain and esophageal reflux, which resulted in her overnight hospital stay. The carrier does not want to pay for the hospital visit and filed a TWCC-21 disputing the compensability of the conditions. The BRO indicated that the Medical Review Division will not consider the dispute, presumably because the carrier filed the TWCC-21. In Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975), the Texas Supreme Court noted that the site of the trauma and its immediate effects are not necessarily determinative of the nature and extent of the compensable injury, and that the full consequences of the original injury, together with the effects of its treatment, upon the general health and body of the worker are to be considered. Taking into consideration the circumstances of this case and the evidence presented, we conclude that the hearing officer did not err in addressing the disputed issue that was before him and in finding in favor of the claimant on that issue. The hearing officer’s decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **NORTH AMERICAN SPECIALTY INSURANCE COMPANY** 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.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Veronica L. Ruberto
Appeals Judge