APPEAL NO. 950301

On January 9, 1995, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). The appellant (carrier) appeals the hearing officer's decision that its Notice of Refused/Disputed Claim (TWCC-21) did not contest respondent's (claimant's) failure to give the employer timely notice of her injury in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ANN. § 124.6 (Rule 124.6), and carrier waived its right to contest compensability on that issue. No response was received from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant suffered a carpal tunnel injury in the course and scope of her employment for (employer). There has been no appeal of the hearing officer's determinations that the date of injury was (date of injury); that the claimant did not timely notify her employer of her injury; that the claimant did not have good cause for failing to timely notify her employer of her injury; or that the claimant had disability for the time period set forth in the hearing officer's decision. The carrier appeals only the hearing officer's determination that its TWCC-21 did not contest claimant's failure to give her employer timely notice of her injury and that the carrier waived its right to contest compensability on this issue. The carrier contends that its TWCC-21 disputed compensability on the basis that the claimant did not timely notify her employer of her injury. The TWCC-21 is dated September 27, 1994, and it sets forth that the date of injury is March 1, 1993; that the carrier's first written notice of injury was September 20, 1994; and gives the following as reasons for refusing or disputing payment of the claim:

Carrier disputes claim in its entirety. Evidence shows EE knew injury was work related in (month year).

Under Section 409.022 a carrier's notice of refusal to pay benefits must specify the grounds for refusal, and the grounds for refusal specified in the notice constitute the only basis for the insurance carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered evidence that could not reasonably have been discovered at an earlier time. The carrier does not assert any matter regarding newly discovered evidence. Rule 124.6 provides, in part, that the notice of refusal shall be on a TWCC-21 and that the notice shall contain, among other things:

(9) a full and complete statement of the grounds for the carrier's refusal to begin payment of benefits. A statement that simply states a conclusion such as "liability is in question", "compensability in dispute", "no medical evidence received to support disability" or "under

> investigation" is insufficient grounds for the information required by this rule.

We have previously stated that magic words are not necessary to contest the compensability of an injury and that we look to a fair reading of the reasoning listed to determine if the notice of refusal or denial is sufficient. Texas Workers' Compensation Commission Appeal No. 93326, decided June 10, 1993. We have also stated that Section 409.022 and Rule 124.6(a)(9) "require specificity and not generalities" in stating the grounds for disputing a claim. Texas Workers' Compensation Commission Appeal No. 92145, decided May 27, 1992.

The carrier contends that the hearing officer erred "as a matter of law" in concluding that it's TWCC-21 did not contest claimant's failure to give the employer timely notice of her injury. It says that the only way the language in its TWCC-21 about evidence showing the employee knew the injury was work related in (month year) can be read is as a contest based on failure to give timely notice. We decline to hold that the hearing officer erred as a matter of law in concluding that the TWCC-21 does not contest the claim based on an issue of timely notice of injury to the employer. The TWCC-21 simply does not mention anything about notice or reporting of the injury to the employer. The TWCC-21 can fairly be read, as it was by the hearing officer, to dispute the date of injury, but not notice of injury to the employer.

The carrier also states in its appeal that:

> Most important to the Appeals Panel to consider in this case is that Claimant admitted at the BCCH to actually being put on notice by this language of the basis for Carrier's dispute: that she failed to timely report her injury. It is difficult to see how the Hearing Officer in this case could conclude that language sufficient <u>in fact</u> to put the Claimant on notice of the grounds for Carrier's dispute, is nonetheless insufficient <u>in theory</u>.

The carrier implies in its statement that the claimant testified that the language in the TWCC-21 put her on notice that the carrier disputed that she gave timely notice of injury to her employer. That mischaracterizes her testimony. She did not testify that the TWCC-21 put her on notice of anything. In fact, she was never asked if she received a copy of the TWCC-21. (Ms. N), the employer's risk manager, testified that she filed an employer's first report of injury with the carrier; that the carrier told her that the claim would be denied for "not filing timely;" that she did not understand what that meant so she talked to the carrier about it again and got an explanation; and that she "discussed that with the claimant." The following exchange then took place between the carrier's attorney and Ms. N:

Q: So within 60 days both you and the [claimant] knew that the reason they were denying the claim was because the [carrier] was taking the position that she did not report it to you within 30 days of the date of injury?

A: Correct.

The claimant testified as follows in response to questions from the carrier's attorney:

Q: You found out later that the [carrier] was denying this because they didn't feel that you reported it within 30 days of the date you knew that it was work related, right?

A: Yes.

Q: Did you and [Ms. N] discuss the October 12, 1994, letter that she sent out?

A: Yes

Q: So before you ever came to the Commission to talk to an ombudsman or before you ever came to a benefit review conference you knew the reason the carrier was disputing?

A: Yes.

In evidence is a letter dated September 28, 1994, from Ms. N to the carrier in which Ms. N states that it is her understanding that the carrier "intends" to deny coverage because it feels that the claimant did not file her claim timely, and that that meant not within 30 days of becoming aware her injury was work related. Also in evidence is a letter dated October 12, 1994, from Ms. N to the Commission in which Ms. N states that it is the employer's position, as well as the claimant's, that the claim was reported to the employer and the carrier within 30 days of the claimant's becoming aware her injury was caused from her work.

We have set forth the testimony and other evidence regarding the carrier's assertion that the claimant was "put on notice" by the TWCC-21 that it was disputing timely notice of injury to point out that nowhere does the evidence indicate that the claimant was ever put on notice of anything by the TWCC-21. At best, the evidence undermines the carrier's argument regarding the sufficiency of its TWCC-21 to dispute timely notice of injury in that even the employer had to seek clarification from the carrier of the grounds for contesting compensability. The evidence tends to show that the carrier told the employer that it intended to dispute the claim based on lack of timely notice to the employer and that the employer then told the claimant that that was the reason for the dispute. However, the

TWCC-21 itself does not mention anything about a dispute based on timely reporting or notice of injury to the employer. While the carrier may have intended to state as a ground for refusal to pay income benefits that the claimant failed to give timely notice of injury to the employer, it did not state that as a ground in the TWCC-21.

The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). Here, the hearing officer found that the TWCC-21 did not contest the claimant's failure to timely notify her employer of her injury, and we decline to hold that she erred in that determination as a matter of law as requested by the carrier, because we find the evidence sufficient to support the challenged conclusion and that the conclusion is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge