APPEAL NO. 941755
FILED FEBRUARY 13, 1995

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held in [City], Texas, on November 14, 1994, with [hearing officer] presiding, to resolve the following disputed issues:

1. Did the Carrier specifically contest compensability on the issue of liability for the bilateral wrist condition pursuant to Texas Labor Code Section 409.021 within 60 days of their first written notice of condition;

2. Is the Claimant's bilateral wrist condition a result of the compensable injury sustained on or about [date of injury].

Based on a number of factual findings the hearing officer concluded that the respondent's (claimant) bilateral wrist condition resulted from the compensable injury she sustained on [date of injury]; and that the appellant (carrier) did not specifically and timely contest compensability on the issue of liability for her bilateral wrist condition pursuant to Section 409.021 and has waived its right to contest the compensability of that claim. The carrier's appeal challenges the sufficiency of the evidence to support seven of the 12 findings of fact upon which the two dispositive conclusions of law are based. No response was filed by the claimant.

DECISION

Affirmed.

It was undisputed that claimant sustained a compensable injury on [date of injury]. However, it was the carrier's position that this injury included claimant's neck, chest, and left shoulder but not her wrist problems. Claimant testified that she had worked for a year as a carcass trimmer; that she had to trim off contaminants using a hook in her left hand and a knife in her right; that her work involved twisting and turning of her neck and back, reaching overhead, and frequently standing on her tiptoes to trim the tops of carcasses; that she may have visited the employer's nurse's office on occasion in February and March 1994 to apply heat packs to her neck and shoulders; that she had been having a problem with dropping the knives and hooks; that on [date of injury], she felt a burning pain in her chest, neck, back, shoulder and upper arms; that this pain was unlike the usual pains she regularly experienced from that work; that her arm pain would come and go; that she reported her pain, including arm pain, to the company nurse that day and was told she need not write down all the details at the time

as a doctor would find out what was wrong; that she thereafter saw her doctor, [Dr. MP], and told him of her pain in these areas; and that Dr. MP referred her for physical therapy (PT).

A March 30, 1994, PT report reflected Dr. MP's diagnosis of neck and left shoulder pain with an onset date of January 1994. This report further stated that claimant's main complaints included "occasional numbness/tingling in right upper extremity extending from shoulder to fingers." Claimant also testified that during a PT session her wrist gave out as she was pushing herself up on the table and the therapist told her she had carpal tunnel syndrome (CTS). It was claimant's opinion that the repetitive movements and the reaching overhead required in her work caused the numbness and tingling she had in some of her fingers on both hands. She also related that Dr. MP referred her to a plastic surgeon for breast reduction surgery (apparently in May 1994) but that her symptoms persisted after the surgery.

A May 19,1994, Specific and Subsequent Medical Report (TWCC-64) from Dr. MP reflected the diagnosis as "pain, neck" and "pain, limbs," stated that claimant still complained of neck and arm pain, and proscribed in his treatment plan the use of knives and hooks until seen by another doctor.

Claimant testified that she later changed treating doctors to [Dr. GC] who diagnosed CTS and took her off work; that on or about June 6, 1994, Dr. GC asked her to undergo a nerve conduction study; that the results of the test, performed on July 18, 1994, showed she had CTS; and that "he [Dr. GC] related that to my neck, the same injury." The hearing officer excluded from evidence Dr. GC's report of claimant's June 6th visit as well as the July 18th nerve conduction study because of claimant's failure to timely exchange those documents with the carrier. Claimant insisted that they were among the documents the carrier sent her after the benefit review conference (BRC) held on September 23, 1994. However, these rulings have not been appealed. Dr. GC's August 17, 1994, report stated that claimant continued to have numbness in her left hand and shoulder and arm pain, and that her testing was positive for bilateral CTS. Dr. GC's September 14, 1994, report added that in his opinion, "this is clearly bilateral [CTS] related to her work. . . ."

Claimant also testified she was treated by [Dr. KP]. In evidence was Dr. KP's September 20, 1994, report which stated that claimant's initial symptoms of her work-related injury consisted of cervical pain, left parascapular, left shoulder and arm pain, and that in his opinion, given the repetitive nature of her work, the CTS was "probably related to the job injury."

Claimant further testified that she was examined by [Dr. RC] and by [Dr. GS]. Dr. RC, who on August 2, 1994, reported that claimant had reached maximum medical

improvement (MMI) with an impairment rating (IR) of zero percent, stated the following in his October 18, 1994, report: "My examination of [claimant] did not show any evidence of [CTS] nor do the symptoms indicate that she has symptomatic [CTS]." He recommended further testing and evaluation. Dr. GS's report of October 28, 1994, which opined that claimant had not yet reached MMI and recommended further testing and resumption of PT, stated that claimant had evidence of left rotator cuff tendinitis and possible mild left CTS apparently documented on previous neurophysiology studies. Dr. GS further stated: "Her complaints of left arm and wrist pain correlates with her reported injury."

The carrier asserts error by the hearing officer in determining that claimant had good cause for not exchanging Dr. GS's report with the carrier prior to the day of the hearing. Noting that the date of Dr. GS's examination was October 28, 1994, that claimant did not receive Dr. GS's report until Thursday, November 10th, that the following Friday was a holiday, and that the hearing was held on the following Monday, the hearing officer found good cause to admit the report. *See* Section 410.160. We find no abuse of discretion in this ruling.

With respect to the issue of whether claimant's bilateral wrist condition was a result of her compensable injury of [date of injury], the hearing officer found that "[c]laimant's wrists injury does extent [sic] to and result from the repetitive trauma activities that resulted in injury to her neck and shoulder on [date of injury]," and concluded that "[c]laimant's bilateral wrist condition is a result of the compensable injury sustained on [date of injury]." The carrier challenges the sufficiency of the evidence to support this finding and therefore the conclusion. We are satisfied, however, that the evidence is indeed sufficient and that the finding is not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Dr. GC, Dr. KP, and Dr. GS all related claimant's bilateral CTS to her compensable injury while Dr. RC disagreed with the CTS diagnosis. The hearing officer is the sole judge of the relevance, materiality, weight and credibility of the evidence. Section 410.165(a). It is for the hearing officer to resolve the conflicts and inconsistencies in the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We will not substitute our judgment for that of the hearing officer where, as here, the challenged finding is supported by sufficient evidence. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied).

The carrier also challenges findings that claimant notified the employer she was experiencing pain in her chest, neck and shoulder as a result of her work activities on [date of injury], that she sought treatment from Dr. GC on June 6, 1994, who diagnosed

a repetitive trauma injury to the left arm, and that she was evaluated on October 28, 1994, by Dr. GS who concluded that claimant's left arm and wrist problems (not necessarily CTS) correlate with her earlier chest, neck and shoulder injury. We find no merit in these assertions of error since claimant's testimony as well as the records of Dr. GC and Dr. GS in evidence sufficiently support these findings. Also, the employer's nurse, [Ms. M], testified that on [date of injury], she took a report of injury from the claimant that she had a burning pain in her neck and left shoulder.

Turning to the issue of the timeliness of the carrier's contest of the compensability of claimant's wrist injury, Section 409.021(c) provides that if an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date the carrier is notified of the injury, the carrier waives its right to contest compensability. *And see* Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 124.6 (Rule 124.6). The carrier challenges several findings regarding this issue. First, the carrier challenges findings that Dr. GC's report of June 6, 1994, was date stamped as "received by" the carrier on June 28, 1994, and that the carrier's first written notice that claimant was alleging an injury to the arm and wrist was that particular report of Dr. GC. Claimant points out that Dr. GC's June 6th report was excluded from the evidence. We agree with the carrier's challenge to these findings having combed the record to no avail for evidence other than the excluded report which would support these findings.

The carrier also challenges the following findings:

**FINDINGS OF FACT**

8. Carrier filed a TWCC-21 dated August 18, 1994, stating that the carrier `controverts care to Claimant's wrists and [CTS]. Neither Carrier nor Employer have any knowledge of any injury to Claimant's wrists.' This TWCC-21 dated August 18, 1994, was stamp dated received TWCC, [City], November 2, 1994.

11. Carrier filed notice of contest of the compensability (TWCC-21) of the wrist injury on November 2, 1994.

The carrier concedes that a TWCC-21 dated August 18, 1994, was date stamped as "received by the Commission on November 2nd but asserts that the document was actually filed on or before September 16, 1994. The carrier's first basis for its contention rests on the application of a Commission rule to determine the date the document was received. Carrier states that Carrier's Exhibit D shows the TWCC-21 was mailed to the Commission on August 18th. However, that exhibit, the TWCC-21 dated August 18, 1994, states at the bottom that a copy was mailed to claimant on "08/18/1994." The carrier then urges that the Commission received the document five days later, on

August 23rd, by application of "Section 122.5(h) of the Texas Administrative Code" providing that the Commission shall deem the document to have been received five days after it was mailed unless such presumption is rebutted by credible evidence. However, Rule 102.5(h) applies to notices and other written communications from the Commission which require action by a specific date.

The carrier next contends that the evidence conclusively shows the Commission's [City] office received the TWCC-21 prior to November 2nd because a BRC was held on the matter on September 23rd and the TWCC-21 "was present at the BRC." The BRC Report in evidence shows that the BRC was held on September 23, 1994. With regard to this disputed issue, the benefit review officer recommended that the carrier "timely contested compensability of the bilateral wrist condition by filing their dispute on the TWCC-21 dated 8/18/94."

Finally, the carrier contends that the TWCC-21 was "exchanged" with both the Commission and the claimant in the carrier's document exchanges of September 15th and October 31st. In evidence was Carrier's Exhibit G, its document exchange package, bearing a certification that it was filed with the Commission on September 16, 1994. However, this exhibit was introduced by the carrier for the limited purpose of being considered only if claimant should appeal the exclusion from evidence of Dr. GC's June 6th report and the July 18th nerve conduction study.

Based upon the BRC report, we agree with the carrier's challenge to these findings and we find them to be against the great weight and preponderance of the evidence. It is apparent from the findings that the hearing officer considered the carrier's first written notice of claimant's bilateral wrist condition to be Dr. GC's June 6, 1994, report date stamped "received" by the carrier on June 28th and the carrier's dispute of that injury to be the TWCC-21 date stamped "received" by the Commission on November 28, 1994, a date well beyond 60 days from June 28th. However, these findings are against the great weight and preponderance of the evidence and hence cannot support so much of the conclusion of law on this issue as stated that the carrier did not timely contest the compensability of the bilateral wrist condition. It is not necessary to reverse the hearing officer's decision and order, however, because we not only affirm the determination that claimant's wrist condition was a result of her compensable injury of [date of injury], but we also affirm in the following portion of the decision the finding and conclusion that that the carrier did not sufficiently state a refusal or denial of the claimed wrist injury.

Finally, the carrier challenges the finding that the carrier's TWCC-21 "is defective in that it does not state a full and complete grounds for the Carrier's refusal to begin payment of benefits." The carrier does not contend that the hearing officer's finding

exceeded the scope of the disputed issue as framed so we will not discuss that matter. Section 409.022 provides in pertinent part that an insurance carrier's notice of refusal to pay benefits under Section 409.021 must specify the grounds for the refusal. Rules 124.6(a)(9) and 124.6(c) provide that the carrier's notice of refusal shall contain "a full and complete statement of the grounds for the carrier's refusal to begin payment of benefits" and that "[a] statement that simply states a conclusion [citing examples] is insufficient grounds for the information required by this rule."

The carrier cites a number of Appeals Panel decisions which it contends indicate that the language employed by the carrier in the TWCC-21 was sufficiently specific. The TWCC-21 stated in pertinent part: "You have the right to request a [BRC] by contacting the TWCC at [phone number]. Carier [sic] controverts care to claimant's wrists and [CTS]. Neithe [sic] carrier nor employer have any knowledge of any injury to claimant's wrists." The TWCC-21 also states that the date of injury was "[date of injury]," that the carrier's first written notice of injury was received on "03/25/94," and that the nature of the injury was "sprain of posterior chest, shoulder, and neck." Carrier argues that when "read as a whole" the TWCC-21 shows that carrier was disputing the claim for the wrists because it was not reported until August 1994 and thus was unrelated to the [date of injury], injury given the passage of approximately five months. However, carrier raised no defense of untimely notice of injury under Section 409.001.

The Appeals Panel has held that "magic words are not necessary to contest the compensability of an injury under the [statute] and rule" and that it will "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. As was stated in Texas Workers' Compensation Commission Appeal No. 94977, decided September 6, 1994, "[t]he key point to be determined is whether, read as a whole, any of the reasons listed by a carrier would be a defense to compensability that could prevail in a subsequent proceeding and whether `the grounds listed, when considered together, encompass a controversion or dispute on the basic issue that an injury was not suffered within the course and scope of employment.' [Citations omitted.]" See the examples of sufficient and insufficient statements of refusal set forth in Appeal No. 94977, *supra*. We do not disagree with the hearing officer's finding on this issue nor find it so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, *supra*. All the carrier's statement really says is that the carrier did not then know anything about the claimed wrist injury. It does not state a defense nor dispute that the injury was sustained in the course and scope of employment.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Thomas A. Knapp
Appeals Judge