APPEAL NO. 92295

A contested case hearing was held on May 13, 1992, at (city), Texas, (hearing officer) presiding as hearing officer. He concluded that the appellant's injury occurred prior to January 1, 1991, and, therefore, there was no jurisdiction under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art 8308-1.01 *et seq*. (Vernon Supp. 1992) (1989 Act). He also found that the appellant had failed, without good cause, to give timely notice of the injury. Appellant asserts error in several of the hearing officer's findings of fact. The respondent failed, without good cause, to appear at the contested case hearing and has not filed any response to the request for review. However, the compensability of the claim was timely contested and was an issue before the benefit review conference.

DECISION

Finding the evidence sufficient to support the decision of the hearing officer, we affirm.

Briefly, the appellant worked for the self-insured employer, (employer), as a laborer in the water department doing heavy lifting of cement, pipes and digging ditches. In 1985 he was injured when a pressure hose sprang loose, flipped him and caused him to fall. He landed on his right side suffering injuries resulting in a workers' compensation claim and ultimately a Compromise Settlement Agreement (CSA). During his testimony the appellant claimed that his hip was not included in his settlement; rather, the settlement was for his right elbow although he indicated he came in limping after the accident. However, the CSA in the file appears to cover all matters related to the 1985 incident. In any event, the hip became worse in 1990 and on March 14th he reported to his supervisor that he was having a problem with his hip. He went to a doctor, x-rays were taken, and he was told the hip was shown to be "in bad shape." He went to a specialist, (Dr. S), the same day and was given medication and exercises to do. He stayed off work for three months and was told that he would have to have surgery eventually. He went to another doctor, (Dr. D), in June 1990 and was told his problem was from drinking too much. Another doctor, (Dr. R), was subsequently seen in July 1990 and he advised that hip replacement surgery was necessary. This surgery was ultimately performed on January 24, 1991. According to the appellant, Dr. R told him his hip injury "was definitely from a fall--a trauma." In a report of injury dated (date of injury) and signed by appellant, his description of injury was listed as:

I was helping to clean out a sewer line with a high pressure hose. I was pulling the high pressure hose out of the sewer line when it flipped out of the sewer line with great force, hitting my body, causing me to flip completely in the air and fall on my right side, injuring my right hip, leg, foot, back, and body in general.

A narrative report of Dr. R dated July 30, 1990 indicates that the appellant finds it difficult to work because of pain in the right hip area. The report goes on to say:

This developed in 1985, possibly as a result of alcoholism, although he states he only drank

a pint or quart a week. He has avascular necrosis of the right femoral head, questionably alcohol induced. He did state however he was thrown up in the air by an air hose injury in 1985 and landed on his right hip and since that time has been developing pain of a progressive nature but since February of this year it has become much worse.

The hearing officer noted that the appellant's characterization of his injury as repetitive trauma lacks support in the evidence of record. He points out that even the notice of injury filed in (date of injury) states that the notice relates to an injury which occurred in 1985. The hearing officer's findings with which the appellant takes exception are:

FINDINGS OF FACT

6.Claimant experienced pain in his right hip at the time of the January, 1985 accident. The pain became progressively more severe.

7.The avascular necrosis (cell death due to deficient blood supply) in the right hip was a result of trauma from the January, 1985 incident.

9.Claimant knew the hip condition was work-related in February, 1990.

10.Claimant submitted a Notice of Injury to the Texas Workers' Compensation Commission no earlier than (date of injury).

13.No good cause exists for failure to file Notice of Injury to the Commission within one year.

From the evidence of record, there is clearly sufficient evidence to support the findings of the hearing officer. The appellant's testimony together with the description of his 1985 injury contained in his notice of injury support the determinations made. And, this evidence is totally consistent with the medical reports introduced into evidence. This evidence does not support any theory that the hip injury resulting in surgery on January 24, 1991 was caused by repetitive trauma or that any injury occurred after December 31, 1990. Texas Workers' Compensation Commission Appeal No. 92154 (Docket No. redacted) decided June 4, 1992. *See also* Texas Workers' Compensation Commission Appeal No. 92048 (Docket No. redacted) decided March 20, 1992. And, the evidence of record clearly establishes that the appellant knew or should have known by no later than July 30, 1990 that his hip injury was related to the 1985 injury or, in any event, related to his employment. Article 8308-5.01(a) requires notice to the employer not later than the 30th day after the date on which the injury occurs or, in the case of an occupational disease, including repetitive trauma, not later than the 30th day after the date on which the employer knew or should have known that the injury may be related to the employment. *See* Texas Workers' Compensation Commission Appeal No. 92044 (Docket No. redacted) decided March 23, 1992; Texas Workers' Compensation Commission Appeal No. 92135 (Docket No. redacted)

decided May 16, 1992. The evidence that the appellant's supervisor was aware of his having a problem with his hip, as testified to by appellant, does not show that the condition was work-related. *See* Mathes v. Texas Employers' Insurance Association, 771 S.W.2d 225 (Tex. App.-El Paso 1989, writ denied).

On appeal the appellant contends at one point that he did not know the hip condition was work-related until his surgery in January 1991 and, at another point, that he did not file a notice of injury until (date of injury) because that was the earliest possible time that he had knowledge of the injury, is not supported by the evidence. In any event, the hearing officer, as the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence (Article 8308-6.34(e)), resolves conflicts and inconsistencies that may arise in the evidence and arrives at findings of fact. Texas Workers' Compensation Commission Appeal No. 92252 (Docket No. redacted) decided July 26, 1992. We find no basis to disturb the challenged findings of fact. Even were we to assume the CSA did not cover the injury herein claimed, any injury the appellant may have sustained as a result of his employment occurred prior to January 1, 1991, and would not, as concluded by the hearing officer, come within the jurisdiction of the 1989 Act. 1989 Act, Section 17.18; *See* Texas Workers' Compensation Commission Appeal No. 92168 (Docket No. redacted) decided June 12, 1992.

The decision of the hearing officer is affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Philip F. O'Neill
Appeals Judge