

APPEAL NO. 92548

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp 1991). On August 31, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that respondent, claimant herein, has disability as a result of her job injury of (date of injury) and ordered payment of all benefits due. Appellant asserts that claimant did not show by a preponderance of the evidence that her injury was compensable or that she incurred disability therefrom.

DECISION

Finding that the decision is sufficiently supported by the evidence, we affirm.

Claimant is an assembly line worker hired by an employment agency to work in a petroleum exploration plant. On (date of injury), she was one of many employees working at a very long table on a marine cable that was between one and three inches in diameter. The cable fell off the table at one end resulting in significant movement of the cable along its entire length. When it got to claimant, it struck her in the chest with enough force to throw her against a table that was behind her, injuring her chest and back. There is no issue of notice; there is no issue raised by any party as to whether the exploration plant controlled her work and could be liable for benefits. All agree that claimant did not come to work the next day. Claimant testified that she went to the company nurse the day of the accident; her employment agency employer says that she only went to the nurse two days after the accident when she came back to work.

In addition to the claimant's testimony and the acknowledgement by a witness for the carrier that claimant went to the company nurse no later than (date), a witness for claimant, EM, testified that she too worked on the line at the plant; she said that she was later hurt when her finger got caught between the cable and one of the clamps that were put on the table to hold the cable after claimant's injury.

The evidence of injury is sufficient to uphold the finding of fact that claimant was struck by a cable while at work. Injury and disability may be established by testimony of a claimant and other lay witnesses. See Houston Independent School District v. Harrison, 744 S.W.2d 298 (Tex. App.-Houston [1st Dist] 1987, no writ). In addition Daylin, Inc. v. Juarez, 766 S.W.2d 347 (Tex. App.-El Paso 1989, writ denied) said that lay proof of the sequence of events, objective symptoms of pain and discomfort fortified by evidence of timely treatment, produced a logical, traceable connection between the accident and the result.

The only issue set forth at the beginning of the contested case hearing was "whether claimant's current disability is a result of her (date of injury) on-the-job injury." It is true, as carrier asserts, that the medical records of treatment are sparse. Claimant did not see her treating doctor, Dr. S, until June 1992. She said she also went to an emergency room for

care in May 1992. Carrier at the hearing and on appeal stressed the credibility of the claimant. While claimant said that after she left the employer, she was unable to stay with subsequent jobs for any length of time because of the effects of the injury, carrier pointed out that she worked for two months after the incident before leaving. Carrier added that she never complained of pain to a supervisor at work after (date) and when she left this employment in December 1991, she did not say she was in pain or could not work. Carrier in pointing out the protracted delay in seeking a doctor's care also calls attention to the lack of objective findings of injury. The medical records of claimant are characterized by the carrier as "very shallow".

The points made by carrier are not without substance. However, each is a matter for the hearing officer to weigh. He determines the credibility of the evidence, not the appeals panel, unless there is some error as a matter of law. See Article 8308-6.34 (e) of the 1989 Act. Evidence offered by claimant did address several points made by carrier. The claimant said she never talked further with supervisors after (date) because they were never around the work; she said she complained to J, who was the plant employee who told her what to do on the line. Claimant described jobs she took at four different places, with none lasting longer than two weeks, which she said she had to leave because of pain in her back and legs or lifting problems. Her doctor has taken her off work as a result of injury. In her statement, claimant said she worked in pain, that the company nurse had told her she would be sore for awhile but it would get better eventually, and she did not have insurance to pay for seeing a doctor. In addition, a statement of TD says that she knew claimant at the time of injury and drove her to work at two of her subsequent employers. She said claimant always complained of the pain in her back and legs during that period.

In Texas Workers' Compensation Commission Appeal No. 92167, dated June 11, 1992, the appeals panel stated that disability may be based on lay witness evidence. In addition, while the medical evidence may not be extensive or strong, it does indicate that claimant was taken off work. Finally, there is no requirement, in cases of injury and disability, that "objective findings" be present to show injury. See Texas Workers' Compensation Commission Appeal No. 92030, dated March 12, 1992. The weight and credibility given to medical records, including questions of their thoroughness and specificity, are matters, just as is other evidence, for the hearing officer to decide. In weighing medical information he can consider objective findings and weigh them significantly when they are present, but objective findings are not essential to a decision involving injury and disability.

Carrier questions the decision in regard to the amount of income benefits payable based on certain periods of employment after the injury. The decision calls for "unpaid temporary income benefits which have accrued from the date of injury to the date of this hearing". Such decision takes into account both the time periods in which temporary

income benefits would not be due or would be reduced because of wages earned and other requirements of the 1989 Act. It is correct and needs no modification.

The decision is based on sufficient evidence of record and is affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge]

Robert W. Potts
Appeals Judge