APPEAL NO. 92562

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 1992). On September 25, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He concluded that appellant, claimant herein, reached maximum medical improvement (MMI) on July 11, 1991 and that injuries from his accident of (date of injury) were limited to his hip and groin. Appellant asserts that Conclusions of Law 3, 4, and 5 are in error. Those conclusions address MMI occurring on July 11, 1991, the limited extent of injuries, and the absence of disability since MMI on July 11, 1991.

DECISION

Finding that the decision and order of the hearing officer are supported by sufficient evidence of record, we affirm.

Claimant had been employed a few months as an electrician when injured on (date of injury). He and others were rolling cable onto a large spool. The cable was approximately 1.5 inches in diameter. As the cable was wound around the spool, some tension was built. When the spool took up the end of the cable, no one contained the free end, and a portion of cable was able to whip back over the spool until it reached the ground. Claimant saw what was developing, threw up his hands before his face, and stepped or jumped back. Unfortunately, the cable struck his groin area as it slammed to the ground. No one disputed that claimant's hip and groin were injured that day. At the hearing, claimant said that after he was struck he fell down on his shoulder.

Claimant was seen at the company first aid station and given an ice pack to reduce swelling. The next day he stayed home and when his wife called employer to report this absence, she was told to have claimant see a doctor at E. clinic. Claimant did so and saw Dr. P on April 11 and April 15, 1991. The history of injury recorded by Dr. P was consistent with the above summary although reports of both visits addressed only the flank, pelvis, or groin area. Dr. P reported no visible bruises or abrasions, but noted tenderness on the first visit and "severe pain to the left leg and hip" on the second. Dr. P released claimant to restricted duty, and thereafter in a statement dated July 24, 1991, said that claimant never complained of neck or arm pain.

Claimant then wished to see his wife's doctor, Dr. G, but he said that the adjuster for the insurance company "refused to let Dr. G see me." That adjuster recommended, claimant said, the TS clinic. Claimant went there and began seeing Dr. H. (We note that if claimant's account of a refusal is accurate, the carrier may have violated the provisions of Article 8308-4.62 which provide that a claimant is entitled to a first choice of doctor.)

Dr. H saw claimant from April 17 to July 11 or 17, 1991, according to the medical records in evidence. On April 17th, he noted swelling and a blood clot. On April 26th the swelling was minimal and the blood clot was resolving, but claimant reported muscle

spasms. Dr. H noted that he would get a consult from Dr. W. On May 6th Dr. H reported that claimant had a limp and was doing physical therapy. On May 16th he noted improvement in pain and discomfort. Then on July 11th Dr. H found full range of motion and no evidence of localized pain; he said claimant could return to work. During none of these visits did Dr. H note any shoulder or arm pain or problem. Dr. W, the orthopedic surgeon on consult, saw claimant on May 1st and May 20th. He too makes no entry as to any arm or shoulder pain or problem. On May 1st he recorded left hip and left thigh pain and prescribed heat and massage. On May 20th he recorded that claimant limped and Dr. W told him "I did not feel that he had anything severe wrong with him." Dr. W's records note that a copy went to the referring doctor, Dr. H. Dr. H prepared a TWCC Form 69 which found MMI as of July 11, 1991 with no impairment.

Claimant testified that he did tell Dr. H of shoulder pain starting in early May, around May 3rd, but that Dr. H did not pay much attention to that complaint. He said that Dr. H also referred him to Dr. F, a psychologist, to learn to relax. Dr. F referred him to Dr. U, who claimant began to see as his treating doctor, in late August 1991. Claimant also saw Dr. C through a financial aid arrangement. Dr. C operated on the ulnar nerve of his left arm in May 1992. Dr. U, an osteopath, in a letter dated September 20, 1991, to the carrier said, in reference to a shoulder injury as stemming from the (date of injury) injury, "it is possible to experience the pain. . .of such an injury at a later date." Dr. C, the orthopedic surgeon who operated on claimant said on July 22, 1992 that the ulnar nerve injury in claimant's arm "could have been the result of the injury at work."

Claimant had seen Dr. S, an orthopedic surgeon for an evaluation requested by the carrier; the date of his report was January 13, 1992. That evaluation stated, "The complaints of pain radiating from his hand to his shoulder are not consistent with normal clinical illness and of course, if this had happened in May, certainly his symptomatology would have improved and not gotten worse since that time." The carrier also sent claimant's medical records to Dr. Si, Assistant Professor of Neurosurgery at Baylor College of Medicine, for evaluation. He responded on September 4, 1992, saying in part:

> Regarding his related accident and continued neck, shoulder, and arm pain, it is possible that these two are related, however, usually an ulnar neuropathy is a chronic and progressive problem which is not usually caused by a single traumatic event. If an ulnar nerve injury were to have been sustained as a result of his work related injury, his symptoms would have most likely been immediate and continuous. Certainly the multiple complaints of neck, shoulder, arm, and chest pain could have been the result of variety of conditions before and since his accident.

In support of Conclusion of Law No. 3 that claimant failed to prove that injuries to his shoulder and arm were caused by the (date of injury) injury, the hearing officer made Finding of Fact No. 8. It said that the medical evidence shows no more than a possibility that the arm and shoulder injuries were caused by the injury at work. While a layman's testimony

as to causation of an injury can be sufficient, the court in Daylin, Inc. v. Juarez, 766 S.W.2d 347 (Tex. Civ. App.-El Paso 1989, writ denied), said that it must show a sequence of events, objective symptoms of pain and discomfort fortified by evidence of timely treatment which produced a logical, traceable connection between the accident and the result. Even if the hearing officer thought that the sequence of events could lead to a delayed report of shoulder/arm pain, he could still choose to accept the opinion evidence of Dr. S and Dr. Si over that of the claimant and his doctors, who at most said it was possible that the (date of injury) injury caused injury to the arm and shoulder. Conclusion of Law 3 is sufficiently supported by evidence of record.

While the thrust of this hearing clearly shows that the controlling issue was whether the arm and shoulder injury were caused by the (date of injury) injury, the hearing officer also announced an issue as to MMI at the beginning of the hearing. In addition, we note that the benefit review officer's report says that one issue was whether the claimant has reached MMI. Claimant's response to the BRC report says also, "(t)he respondent disagrees with Dr. H's certification (which, by the way, ignores the shoulder and arm problem) and. . . ." Upon initial review, the issue of MMI appeared to fall within the purview of Article 8308-4.25 of the 1989 Act which calls for the use of a designated doctor when MMI is disputed. (*Also see* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6 [Rule 130.6].) As a result, the case would normally be remanded so that a designated doctor could examine the claimant. In this case, however, that process is not essential. Reference to MMI in the disputed issues at the benefit review conference reflects claimant's position to be "Claimant states he is continuing to have problems with his arm and shoulder. Claimant had surgery to his elbow May 19, 1992. Claimant claims he has not been able to return to work since the date of injury." This position makes it clear that even though MMI was stated to be an issue at the BRC, it arose to protect the issue of injury to the arm and shoulder which had not surfaced at the time MMI was certified; the MMI issue was a corollary to the injury issue to assure that it could be considered. There is no indication in the record that certification of MMI, as it related only to the hip and groin injury, was ever disputed to the Commission. (*See* Rule 130.6).

The issue litigated at the hearing was whether the shoulder/arm injury was compensable. This issue as to causation in regard to the arm/shoulder is clearly for the hearing officer to decide. He may look to medical evidence in deciding the question of causation, but there is no requirement that a designated doctor must be involved in this decision.

While claimant testified that his pain continued in his groin and hip area, that evidence goes to the question of whether he had disability. It is true that Conclusion of Law No. 5 could have stated more clearly that disability ended on July 11, 1991, but that conclusion is sufficiently supported by Dr. H's letter of July 17, 1991 that said claimant could return to work. Even if the case were remanded and a designated doctor found that MMI, as to the hip and groin, occurred later than July 11, 1991, the determination that disability did not continue past July 11st would still result in no additional TIBs. The Conclusion of Law that

claimant reached MMI as to the hip and groin is not error because that question was not in dispute.

In considering this appeal, a timely request for appeal was received and considered. Similarly, a timely response was received and considered. Thereafter, submissions by both claimant and carrier were untimely and were not considered.

The decision is not against the great weight and preponderance of the evidence and is affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Lynda H. Nesenholtz
Appeals Judge