

APPEAL NO. 93091

This appeal arises under the Texas Workers' Compensation Act (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1993). A contested case hearing was held in (city), Texas, on January 6, 1993, to determine whether the claimant, who is the respondent in this case, had injured his back, neck, and right knee, in addition to his right foot, as a result of his on-the-job accident of (date of injury). The appellant, who is claimant's employer's workers' compensation insurance carrier, appeals hearing officer decision in claimant's favor. The carrier contends that the hearing officer erred in finding and concluding that the claimant on August 27th sustained a twisting injury to his body which resulted in injuries to his back, neck, and right knee, and that such injuries were compensable. The carrier also alleges error in the hearing officer's failure to consider the additional issue of whether the claimant provided prior notice to his employer of his alleged injuries to his back, neck, and right knee within 30 days of August 27th. The claimant in response contends the hearing officer's findings, conclusions, and ruling on adding an additional issue are correct.

DECISION

We affirm the decision and order of the hearing officer.

The claimant testified that on (date of injury) he had been employed by (employer) for one to one and one-half months as a carpenter helper. On that date, while standing on tiptoe handing a 13-foot piece of tubing to a coworker, a steel flange hit him on the right side and on the right foot; he said it knocked him to the right and that he twisted his body. He said his foot immediately hurt, but that he kept working that day. He did not immediately notice a problem in his back or neck because he said he was always sore in the back, shoulders, and legs after work. Because his foot continued to swell and to hurt, he talked to his supervisor and received permission to go to the emergency room at Hospital.

Medical records in evidence show the claimant was seen by Dr. A in the emergency room on September 9th. X-rays of the foot were performed but no fracture was detected; however, the doctor took him off work for two weeks to rest his foot. Claimant was also seen by Dr. A on September 13th and 16th, and on October 2nd. Although the claimant said he and Dr. A had problems communicating, he also testified that he did not mention anything but foot pain to this doctor.

The claimant was released to light duty work and returned to work for a while; when he was released to full duty he told his employer he wanted to go to his own doctor. He also said that when the usual soreness and stiffness he had from his job wore off, while he was at home on off-work status, he began to notice persistent, stabbing back pain. On October 10th he saw his family doctor, Dr. H. He said he told both Dr. H and the nurse about his back problems. The doctor's initial medical report says "patient

states he injured his right foot while at work," and diagnosed a contusion because initial x-rays were negative. However, handwritten nurses' notes, presumably from Dr. H office, stated on October 10th, "Pt c/o hurt R foot. He had x-ray done last month-He states there were (sic) no fracture." Notes in what appears to be different handwriting continue, "Back pain since injury." Nurses' notes from a November 20th visit note pain in legs, knee strain-light tear, and back strain.

Because of claimant's continued foot pain, Dr. H referred him in October to a specialist who performed further tests and put claimant in a leg cast for a broken bone. He said Dr. H also referred him to Dr. C, a bone and joint specialist, for treatment of his back and leg. Dr. C initial medical report dated December 11th gave as the claimant's history an accident at work which "caused him to twist, injury (sic) his right foot, right knee, and back. He is presently complaining of low back pain. He states he gets a sharp, stabbing pain in his back on arising on occasional (sic) which has caused him to fall. He also complains of some numbness on the medial aspect of his right leg and right great toe. In regards to his knee he states this has given way on occasion and gets numb." Dr. C diagnosed right knee sprain and lumbosacral radiculitis and ordered medication and physical therapy for his foot. Claimant testified that sometimes he could not tolerate the foot therapy because of his back pain.

On January 7, 1992, Dr. C stated the claimant was "about five months and three days status post injury to his back, right knee, et cetera. This patient feels that his low back is getting worse that he has been having pain down his right lower extremity and some numbness along the medial aspect of his thigh and knee. . .He is also having some pain in his neck, headaches, and some upper extremity. I feel that in spite of the normal CAT scan that the patient had done on 11-27-91. (sic) This patient has a herniated disc with impingement on L-4 nerve root." Dr. C referred claimant to Dr. R, a neurologist, for further evaluation.

Dr. R examined claimant on February 4th for numbness of the big toe and up to the mid thigh and pain in the knee, back, and up into the neck. He ordered x-rays of the lumbar spine and on February 20th reported no significant abnormalities. He also said a lumbar spine MRI revealed some degenerative disc disease at L3-4 and 5 levels, a mild asymmetric bulge at L3-4, but no herniated disc. He stated claimant required no surgery, but only needed conservative orthopedic treatment. He also stated, "[i]t is felt from the cervical point of view, certainly, he also does not need any surgery and has some changes which I think are longstanding and should not require any surgical procedure."

Claimant was also examined by Dr. C, carrier's doctor. In a lengthy report of medical evaluation he summarized claimant's complaints, the results of his examination, and reports of medical tests. He concluded as follows: "According to history, this patient sustained a severe contusion to the lateral aspect of the right foot. . .This area is still

symptomatic and there is evidence of early degenerative changes in this joint. I could not detect any evidence of injury to the right knee. Other than the patient's complaints, I could not detect any evidence of injury to the spine. I would think that this patient would benefit from a work hardening program. I would expect that after 4-6 weeks of work hardening that he would be able to return to work."

Dr. C also referred the claimant to another neurologist, Dr. E, who saw claimant on August 14, 1992. Dr. E wrote: "A cervical spine CAT scan is reported as showing a small left herniated C4-5 disc, a calcified left herniated C6-7 disc, and bilateral foraminal C5-6, more on the left. A lumbar spine CAT scan showed evidence of multilevel facet degenerative joint changes. However, I am not certain that his CAT scan abnormalities correlate with the symptoms. . ." Dr. E recommended an MRI of the brain to evaluate claimant's complaint of headache, an EMG study to evaluate his complaints of numbness of both hands, and a TENS unit on a trial basis. Apparently Dr. E did not see claimant again, although he wrote to claimant's attorney on January 5, 1992 (sic) that based upon the history provided by the claimant and Dr. H records, "[claimant's] complaints of neck, back and lower extremity pains do appear to be related to the blunt trauma injury of the right foot on 8-27-91, which the patient states jerked his whole body. The mechanism of this type of injury could indeed lead to complaints of neck and back problems."

Also made part of the record was a transcription of a recorded statement claimant gave carrier's adjuster on October 4, 1991. In that transcription, claimant told the adjuster that the only injury he sustained from the accident was to his right foot and that he received no other injury. The claimant said that after this conversation with carrier's adjuster was when he was told he could go to see Dr. H. He said that just before he went to see Dr. H on October 10th, he began to associate his back pain with the August 27th incident because "after all the [usual] stiffness left, I had some pain that wasn't stiffness."

The claimant testified at the hearing that he continues to have pain in his foot, knee, back, neck and head, which he said did not exist prior to (date of injury). He said the extent of the pain prevented him from working and from pursuing his taxidermy business. The claimant's wife confirmed his complaints of pain. VH, the employer's safety person, testified that the claimant was an excellent worker and he believed him to be truthful. The claimant said he had had one prior on the job injury involving his left foot, which required surgery in either 1979 or 1980.

In her discussion the hearing officer stated in part: "Although it is extremely difficult to visualize the accident made the basis of this case, it is certainly plausible that a blow to the foot, occurring while one is standing on tiptoe, would cause an extremely jarring injury which could extend to and affect the knee, back, and neck. In addition, it is noted that Claimant appeared to testify in an honest and forthright manner, and gave a credible

explanation for his failure to make a specific complaint of back pain prior to mid-October of 1991. For this reason, a decision in favor of Claimant is appropriate."

The 1989 Act defines "injury" to include damage or harm to the physical structure of the body, as well as those diseases or infections naturally resulting from the damage or harm. Article 8308-1.03(27). Whether any subsequent manifestations are part of the original injury is a question of fact.

The carrier's appeal is based upon the factual sufficiency of the evidence to support the hearing officer's findings, conclusions, and decision and order that the claimant on (date of injury) sustained a compensable injury to his back, neck, and knee in addition to the injury he sustained to his right foot. The carrier contends that in this case the overwhelming weight of the evidence is against the hearing officer's determination. In support, it argues that the claimant first complained about back injury on or about October 10, 1991; that his diagnostic testing was essentially normal; that he failed to introduce any evidence to corroborate injury to his back, neck, and knee; that claimant's reports to doctors have been inconsistent, and his report to carrier's adjuster mentions only a foot injury; and that claimant's complaints are essentially of pain, which is not a compensable injury in and of itself in the absence of physical damage.

When reviewing a question of the factual sufficiency of the evidence to support a finding, we will consider and weigh all the evidence, both in support of and contrary to the challenged finding, and uphold the finding unless we determine that the evidence is so weak or the finding is so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer is the trier of fact in a contested case hearing and is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given the evidence. Article 8308-6.34(e) and (g). As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the testimony. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all or part or none of the testimony of any one witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). A claimant's testimony, if believed, can support a finding of injury. Highlands Insurance Company v. Baugh, 605 S.W.2d 314 (Tex. Civ. App.-Eastland 1980, no writ). The trier of fact also judges the weight to be given expert medical testimony, and resolves conflicts and inconsistencies in the testimony of expert medical witnesses. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

In this case, the hearing officer's discussion made clear she found the claimant to be a credible witness. There was evidence to support a finding that the claimant did not discern any onset of back, neck, or knee pain until later, when the usual soreness incident

to his work wore off, and that he reported such problems to his treating doctor shortly after they manifested themselves. The treating doctor subsequently referred the claimant to one specialist for his foot and another for his leg and back; while he did not see the latter until December of 1991, the claimant testified that Dr. H "wanted to work on my foot first." The referral doctor also prescribed therapy and ordered further tests, including one that disclosed a cervical herniation. One referral doctor, Dr. E, stated that the nature of the claimant's injury could lead to complaints such as claimant was asserting. In short, we find that the hearing officer's decision was not so against the great weight and preponderance of the evidence as to be unfair or unjust. Pool v. Ford Motor Co., 715 S.W.2d 692 (Tex. 1986). See also Texas Workers' Compensation Commission Appeal No. 92160, decided June 8, 1992 (Compensability of subsequently manifesting injuries established by claimant's testimony and medical reports providing rational explanation for symptoms being masked by initial concern with hernia condition; expert medical testimony stating definitively that injuries were caused by employment deemed unnecessary).

The carrier also alleges error in the hearing officer's failure to consider the additional issue of whether the claimant gave timely notice of injury to his back, neck, and knee, contending that it had continually, since its December 11th response to the benefit review officer's report, maintained that the claimant did not report an injury to his back, neck, or knee to his employer. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7 (Rule 142.7). However, we find that the hearing officer's refusal to add this issue does not constitute error because of our affirmance of the hearing officer's determination that the claimant's back, neck, and knee injuries were part of his original compensable injury. There was no dispute that claimant timely notified his employer that he had suffered an injury on August 27th. That he did not go into greater detail regarding the extent of his injury, of which he was not aware at that time, does not cause his claim to fail for lack of notice (although it may well be a fact that is relevant to whether claimant suffered these injuries as the result of the original incident). Courts have held that the function of the timely notice requirement is to give information as to what happened and to serve as a proper basis for investigation of the claim. "It is not intended that the claim filed be governed by any strict rules or formalities. It is not required of claimants that they know correct legal classification, the medical name of the disabling condition, or proper diagnosis of the injury or disease which causes their incapacity." Select Insurance Company v. Patton, 506 S.W.2d 677 (Civ. App.-Amarillo 1974, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge