APPEAL NO. 931151

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (formerly V.A.C.S, Article 8308-1.01 *et seq*.) (1989 Act). A contested case hearing was held in (city), Texas, on November 10, 1993, before hearing officer (hearing officer) to determine whether the claimant, who is the respondent in this case, sustained a left wrist injury at the same time he sustained a back injury on (date of injury), and whether the claimant timely reported his left wrist injury to his employer. Claimant's employer's workers' compensation insurance carrier, who is the appellant in this action, contends that the great weight of the evidence is against the hearing officer's decision that the claimant sustained a wrist injury in the course and scope of his employment. The claimant responds that the hearing officer's decision and order should be upheld.

DECISION

We affirm the decision and order of the hearing officer.

The claimant was employed by (employer), a painting contractor. On (date of injury), claimant injured his back when he lost his balance while helping to carry a steel beam, causing him to bear the weight of the beam. The same day claimant reported to his supervisor, (V), that he had hurt his back. The carrier has accepted liability for the back injury.

It was claimant's testimony that the incident on (date of injury) caused him to experience pain in his left wrist, as well as in his neck and back, and that he reported this to (Dr. B), to whom he was sent by his employer. However, he said that Dr. B said he only wanted to treat his "main pain," i.e., his back, first. Records from Dr. B show that he saw claimant for lumbar strain on November 16th and December 7th, and that he ordered work hardening for two weeks. Progress notes from the work hardening program show the claimant indicating that his problem was in his low back.

Claimant thereafter changed treating doctors, to (Dr. G), with whom he was continuing to treat at the time of the hearing. Dr. G's earliest report is dated February 9, 1993, and contained claimant's complaints of pain in the low back, neck, and both wrists, particularly the left. At that time Dr. G gave a diagnosis of a torn triangular ligament of the left wrist, and ordered studies including MRIs. On March 2nd Dr. G wrote that claimant's studies showed a herniated disc at L4-5 and L5-S1, along with the following findings in the left wrist: torn triangular ligament; fracture, scaphoid of left wrist; posttraumatic tendon ganglion cyst, left wrist; and partial tears of the radiolunoscaphoid and radiolunocapitate ligaments. On March 30th Dr. G wrote that the claimant was a candidate for surgery on his left wrist, which he described on April 13th as a bone graft procedure to the left scaphoid. While a later report from Dr. G indicated that surgery had been refused by the carrier, the claimant did undergo spinal surgery.

Due to a dispute over maximum medical improvement (MMI) and/or impairment

rating (Dr. G had consistently found claimant had not reached MMI), (Dr. L) was appointed by the Commission as designated doctor. In his report Dr. L noted in pertinent part that claimant "appears to have a chronic ununited scaphoid fracture, however, there are no contemporaneous records that suggest this was in any way aggravated by the incident of (date) (sic), therefore if treatment of the wrist is pursued, this should probably be pursued privately."

The evidence also showed that the claimant completed and signed a notice of injury on February 5, 1993, which gave the nature of his injury as "back, neck lt foot and body in general."

The carrier contends on appeal that the great weight and preponderance of the evidence presented at the hearing is that the claimant did not sustain an injury to his left wrist in the course and scope of his employment, pointing to evidence in the record that supports its contention. Such evidence included the fact that there was no documentation to support the wrist injury until after the claimant had signed his notice of injury nearly three months after the incident on (date of injury).

The claimant in a workers' compensation case has the burden of proving that he was injured within the course and scope of his employment. Reed v. Casualty & Surety Company, 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). Recovery has been allowed in a workers' compensation case where the manifestation of an injury occurs later than the precipitating event. Lujan v. Houston General Insurance Company, 756 S.W.2d 295 (Tex. 1988).

The record in this case discloses conflicting evidence concerning whether the claimant's wrist injury arose from the work-related incident which concededly caused his back injury. The claimant testified to an event whereby he assumed the weight of a heavy steel beam he had been carrying, and to the fact that he experienced wrist pain from this event. He also testified that he reported such pain to his first treating doctor, who apparently did not record such symptoms. It is also true that the claimant (or his attorney) did not record a wrist injury on the notice of injury form. However, the evidence also shows that the claimant, upon changing treating doctors, gave Dr. G at the initial visit a history of back and wrist pain arising from the work-related incident, and that Dr. G ordered tests which disclosed an injury to claimant's left wrist. Dr. L felt the wrist injury was not a part of the original incident, apparently based upon the lack of contemporaneous documentation.

With the evidence in this posture, we cannot say that the evidence was so weak as to make the hearing officer's determination 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 1989 Act provides that the hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. As the trier of fact, the hearing officer weighs all the evidence and decides what credence should be given to the whole, or to any part, of the testimony of each witness, and resolves conflicts and inconsistencies in the testimony. Gonzales v. Texas Employers Insurance

Association, 419 S.W.2d 203 (Tex. Civ. App.-Austin 1967, no writ). While different inferences might reasonably be drawn from the evidence presented, this fact alone is not a sufficient basis to reverse the decision of the fact finder. Texas Workers' Compensation Commission Appeal No. 92308, decided August 20, 1992.

The hearing officer's decision and order are affirmed.

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Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge