

APPEAL NO. 93227

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. 1993). On February 23, 1993, a contested case hearing was held in (City), Texas, with (hearing officer) presiding. He determined that appellant's (claimant) ear problem was not caused by his work and that claimant did not report a work related injury in a timely manner; since there was no compensable injury found, claimant had no disability under the 1989 Act. Claimant asserts that the great weight and preponderance of the evidence indicate that claimant was injured on the job, gave timely notice of injury, and has disability. Respondent maintains that there is sufficient evidence to uphold the hearing officer.

DECISION

Finding that the decision is supported by sufficient evidence of record, we affirm.

Claimant worked for a drilling company. He had worked in the oil field since 1987. On (date), 1992, he went to a well site with a crew, other than the one he normally worked with, as a relief floor hand. He testified as follows in regard to handling steel pipe, approximately 30 feet long, on the second day that he worked with this particular crew, (date):

ANow, there's one end on the ground and one up on that rig floor. I was down on the ground, and I just pulled the pipe and made the pipe fall on top of the -- the existing pile there.

QAnd what happened again when that occurred?

AWell, it makes a loud clinging noise.

QAll right, sir.

AAnd I just felt my ear like get stopped on me. It -- I didn't feel any pain but it just stopped up on me and I couldn't -- I didn't know what was wrong.

Claimant also stated that he had no ear problem before that time. He said that he told other crew members that his ear "just stopped up on me all of a sudden." He added that he told the supervisor something was wrong with his ear. That night when he went to little league baseball, he told "his assistance coach" what had happened. The next day he did not go into work, but called the employer's safety employee and told him, "I still can't hear out of this ear and I'm having problems walking right now. I'm having problems with my balance." The safety employee asked claimant to come in and see him, which claimant did. He testified that on date,

I told him that we were laying down pipe that morning, and my ear stopped up on me while we laid down some pipe; then I kept on working, and it didn't really bother me except I couldn't hear, and then, you know, towards the end it really started -- it was annoying, that buzzing sound; and he says: Go see your own doctor; you've probably got an ear infection so, you know, I -- you know, I went to see a doctor and I got hospitalized.

Claimant then testified that when he saw the doctor that same day, he told him that while laying down pipe, his ear stopped up. Claimant added that he still cannot hear in that ear and on some days still feels dizzy.

The doctor who claimant went to see, (Dr. Z), noted on (date) that claimant reported with a sudden hearing loss in his right ear. His note continued, "He was at work in the oil patch and noted when he came home that he was not hearing. That was yesterday. Today he woke up and was slightly dizzy. . . ." Dr. Z, both in his discharge summary after claimant was released from the hospital on April 20, 1992, and in a letter he wrote on May 8, 1992 to the Texas Department of Human Services, described the hearing loss as "idiopathic"--his diagnosis was "idiopathic sudden hearing loss"--(Dorland's Illustrated Medical Dictionary, 27th Edition states that "idiopathic" means, "of the nature of an idiopathy; self-originated; of unknown causation." It then says that "idiopathy" means "a morbid state of spontaneous origin; one neither sympathetic nor traumatic"). Claimant then chose to see (Dr. O), who in a letter to an attorney on May 14, 1992, said that "[i]t is my opinion that the most likely cause of the hearing loss was the extremely loud noise he was around as well as exertion in laying down the pipe underneath the rig." Claimant has seen Dr. O twice. The following questions were asked of claimant by his attorney at the hearing:

QOkay. Did she recommend (Dr. O) or was it somebody else that recommended (Dr. O)?

AIt was my wife's aunt and that attorney. They were close friends and they -- they said if you can find a doctor that will give you -- that will say it was work related, then we have a case. If you can't find a doctor, then we don't have a case.

QEven though you told her it was work related?

AEven though I told her.

Claimant's wife testified that he reported the hearing loss to her and had not had such a loss before (date of injury). (JH) testified that he knows claimant as a baseball coach. He recalls a day, probably in April 1992, when he came to the baseball field and claimant was leaning against a backstop in an unusual way and was not his usual self. JH said

claimant told him he could not hear and had a buzzing in his ear. JH testified, "[h]e told me it happened that day at work."

The carrier called three witnesses; the first was the safety director, (KH). He said that he was not at the site on (date of injury). He did have work records from the site in question on (date) and (date), which show that claimant was at work on those days. He also said that those work records do not show that any pipe was laid down on either day. He added that the work shown by the work record made it illogical to have laid down any pipe either day. He did testify that the record showed that a seal assembly was laid down. He also said that while pipe was not laid down, it was "stood back" (vertically) in the derrick; this operation was less noisy than would be the laying down of pipe on top of each other. He addressed ear plugs by saying that they are made available but not required in work such as was going on at the time in question, because the noise level has not been considered as hazardous. He recalled that claimant called him the morning of April 15, 1992, and stated that when claimant came to his office, he reported difficulty in hearing and balance which he had noticed the day before at work. "But he did not give me any indication that led me to believe it was a result of anything that happened at work." KH did tell claimant he should see his family doctor. KH added that claimant did not indicate any work related problem until he filed a claim in June 1992.

(FP) testified that he was the toolpusher (claimant's supervisor) of the crew that claimant worked with on (date) and (date of injury). He does not recall claimant saying anything about an injury, but remembers that (LO) said on (date) that he didn't pick up claimant because he had an ear problem. He stated that the work records do not show pipe laid down on either day but would have indicated that fact if it had occurred. In addition, he stated that it would make no sense to lay down pipe on either day because of the type work going on--they stood pipe in the derrick instead. In answer to a question about noise, he testified that there are other types of work at the site that make more noise than laying down pipe, such as "hammering the joint." He further stated that he was not present on (date) because he had a doctor's appointment that day.

LO testified that on (date), he was pulling the pipe out of the hole. The pipe was then stood up. On (date) when he was pulling pipe, he said no pipe was delivered to the site, but he could not remember about (date). Standing pipe up is less noisy than laying it down. He testified that no pipe was laid down on (date). In answer to whether claimant said anything about his ear, LO said that on the first day claimant was with them, (date), claimant told him to speak louder when he asked him something because, claimant said, he was having problems with his ear. On (date), he testified that claimant told him he would not go into work that day because he was going to see a doctor, that his ear hurt during the night; LO said claimant did not say anything about the cause of the problem. LO also testified about different noises at the site, motors running, tongs on pipe, etc. He agreed that during the time between the incident in question and the date of hearing, he had been

promoted in his work.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Article 8308-6.34(e) of the 1989 Act. As finder of fact the hearing officer judges credibility and resolves conflicts in the evidence; he can believe all, some or none of any testimony (See Ashcraft v. United Supermarkets Inc., 758 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). Since claimant is an interested party, the hearing officer does not have to accept his testimony concerning the injury. (See Presley v. Royal Indemnity Insurance Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). The hearing officer, as finder of fact, can decide which medical evidence, conflicting as to causation of the ear problem, to weigh more heavily. (See Atkinson v. U.S. Fidelity & Guaranty Co., 235 S.W.2d 509 (Tex. Civ. App.-San Antonio 1950, writ ref'd n.r.e.). In the case under appeal, the hearing officer could choose to give more weight to the testimony concerning the type of work going on during the time in question as indicating that pipe was not laid down, contrary to what claimant testified. He could give more weight to the notes of the doctor who first saw claimant and treated him throughout his hospital stay than to the next doctor's opinion concerning the cause of the loss of hearing. Similarly, he could view the history recorded by the first doctor as weighing more heavily than the history recorded by the second doctor. He could view the testimony of various crew members as consistent in describing that claimant reported a medical condition rather than any work event relating to his condition; he could conclude also that claimant's testimony concerning his ear problem did not directly tie it to a work event, but appeared to indicate more that he felt the loss while working, although he felt no pain.

The evidence is sufficient to support the hearing officer's findings that claimant did not show that he sustained a work-related injury and did not show that he timely notified his employer of a work-related injury. The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Thomas A. Knapp
Appeals Judge