APPEAL NO. 93265

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). On February 25, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that respondent (claimant) was injured in the course and scope of his employment (a tear in the chest from lifting) and should receive benefits. Appellant (carrier) asserts that the alleged injury requires expert medical evidence to sustain the burden of proof, which was not met, and requests reversal. Respondent filed no reply.

DECISION

Finding that the decision and order are supported by sufficient evidence as to injury and that no appeal is made in regard to disability, we affirm.

Claimant worked for (employer) for nine months when he states that he felt a "pop" in the back of his chest on (date of injury) while lifting stacks of eggs, weighing approximately 30 pounds. He testified that he told his supervisor, (MA) that he had hurt himself, but MA was not interested in dealing with his injury. He said MA gave him a piece of paper to sign saying that if he did not come to work he could be fired. (The processing manager for employer, (TM) later testified that MA had given claimant a reprimand approximately one month before which said in part that claimant could be fired for missing work.) Claimant stated that he left work and saw (Dr. S). He said that Dr. S did not know what was wrong and eventually sent him to see (Dr. E). He maintained that he told Dr. S that he was injured on the job. (Dr. S's records indicate that he saw claimant on July 8th for nasal congestion and headache--with the immediately preceding entry being on June 12, 1992--there is no entry by Dr. S on July 6th and the July 8th entry mentions no chest injury. Dr. S does say "previous injury ok" on July 8th, which may refer to the entry of (date) which says "vehicle jack slipped and hit (claimant in the) lower sternum area." The June 12th entry was a follow-up to the (date) entry.) Claimant said that Dr. E did not know what was wrong either, so he went to his family doctor, but the employer would not pay for that. He next saw (Dr. V) at the emergency room of the medical center in (city), Texas, who told him he had "chontrondritis" (phonetic), "its like a tear." He said that Dr. V prescribed various medications for him.

Dr. S's notes show that the (date) complaint regarding an accident with a jack referred to the sternal area and the right side of the chest. After seeing claimant for congestion on July 8th, Dr. S's nurse on July 15th states that claimant complained of feeling weak. Dr. S then states that claimant was unable to give specifics. Then on July 20th, Dr. S notes claimant reports coughing blood "cannot find anything wrong - refer for another opinion."

Dr. V's note of (date) says that claimant reports hurting his chest at work on (date of injury). "Has complained of severe intermittent left chest pain since. The form used to make this record has an area for "final diagnosis" which has writing immediately thereafter that is only partially legible because of what may have been an attempt to highlight, but which

obscured the copy in evidence. Someone then neatly printed (this does not appear to be the physician's writing) the word "costochondral" immediately above the obscured area. Prescriptions given were shown as Medrol and Soma. Heat was also ordered. (We note that the hearing officer took notice of the Physician's Desk Reference which shows Medrol has "potent anti-inflammatory effects." Soma "produces muscle relaxation in animals" and is used "for the relief of discomfort associated with acute, painful musculo-skeletal conditions." We observe that the word following "final diagnosis," which is obscured, appears to end in the letter "s" when compared to the doctor's writing above in the word "his"; also the third letter from the end of the obscured word appears to be a "t" when compared to the doctor's writing above in the word "breath"; these letters make the obscured word consistent with "costochondritis" rather than the printed "costochondral" and also, more consistent with what the claimant testified the doctor told him. Dorland's Illustrated Medical Dictionary, 27th Edition, also taken notice of at the hearing, defines "chondritis" as "inflammation of cartilage." "Cost(o)" in the same dictionary refers to the ribs. As stated, Medrol "has potent anti-inflammatory effects.")

Emphasis at the hearing and on appeal was placed on the fact that "costochondral" referred to an area of the body, not an injury. The carrier said that there is no mention of torn cartilage or any injury. (Had the hearing officer found that Dr. V diagnosed "costochondritis," an injury would have appeared in the medical record.) The carrier also argued at hearing and on appeal that expert evidence is necessary to prove a causal connection. At the hearing, Parker v. Employers Mutual Liability Insurance Co. of Wisconsin, 440 S.W.2d 43 (Tex. 1969) and Schaefer v. Employers' Insurance Ass'n, 612 S.W.2d 199 (Tex. 1981) were cited, and on appeal reference was made to Griffin v. Texas Employers' Insurance Ass'n, 450 S.W.2d 59 (Tex. 1969)--allowing lay testimony to prove causation--to stress that the symptoms reported by claimant in the case on appeal required expert testimony to prove causation, not just lay testimony.

In Fidelity & Guaranty Insurance, Inc. v. La Rochelle, 587 S.W.2d 493 (Tex. Civ. App.-Dallas 1979, writ dismissed) the court said, in referring to an argument that expert testimony was required as to a back injury related to a ping pong game, accompanied by a citation of Parker, (cited *supra*):

> Parker does not stand for the proposition that expert medical testimony is required in worker's compensation cases to show injury. The courts of this state have long recognized that the opinion of an expert is not conclusive and is not necessary except where matters of scientific fact can be proved only by experts with scientific knowledge.

In TEIA v. Thompson, 610 S.W.2d 208 (Tex. Civ. App.-Houston [1st Dist] 1980, writ ref'd n.r.e.) a sandblaster's hose blasted his face with sand under pressure. In referring to the requirement (exception) in Parker, which calls for expert testimony, the court said:

But the exception is a narrow one and is not to be applied unless the facts come strictly within it. . . .It does not apply to cases where the claimant contends that he has no disease or cancer, but only that he suffered an injury to a specific part of his body which immediately and directly caused a disability. . . .

Northern Assurance Co. of America v. Taylor, 540 S.W.2d 832 (Tex. Civ. App.-Texarkana 1976, writ ref'd n.r.e.) involved an allegation of hernia caused by rising up out of a truck seat with a foot placed on the pavement. There was no medical testimony that in reasonable medical probability leaving one's seat caused the hernia. Taylor testified that he felt pain and a knot appeared. The court stated that the evidence was sufficient to submit the issue to the jury; the common experience and knowledge of the jury was sufficient to determine causation. More recently, Daylin Inc. v. Juarez, 766 S.W.2d 347 (Tex. App.-El Paso 1989, writ denied) in which Juarez claimed back injury when a stack of railroad ties he stood on in a store fell down, quoted the standard applicable to causation in injury cases:

The lay proof of the sequence of events, his objective symptoms of pain and discomfort fortified by evidence of timely treatment, produced a logical, traceable connection between the accident and the result.

The Appeals Panel has stated that issues of injury and disability may be established by lay testimony, pointing out that the 1989 Act had not been substantially changed in the area of "injury" as compared to the prior law. *See* Texas Workers' Compensation Commission Appeal No. 92167, dated June 11, 1992. The hearing officer in the case on appeal did not err in reaching her decision without additional medical evidence.

The record in this case also includes a note from Dr. E that may sum up this case very well; he says, "[t]his man finds it difficult to be specific about his story." The claimant's testimony and the medical records of Dr. S (in which claimant did not complain of chest injury on July 8th) do not provide a classic example of a "logical, traceable connection." According to a conclusion of law, the claimant had an injury. The medical records do show treatment (Medrol) that is defined as being for inflammation (indicative of treatment for an injury) which the claimant described as being for the left side of the chest, as opposed to the right side which was reported in the jack slippage incident. While the facts of this case could support a different interpretation, it is matters such as this that are for the hearing officer as trier of fact to determine.

Article 8308-6.34(e) of the 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. She could believe the claimant when he said he hurt his left side of his chest at work. In addition, she could believe that the note of Dr. V buttressed claimant's testimony as to injury. She did not have to give more weight to the

statement of MA, who said that claimant told him the pain in his chest had been present a few days and might be ulcers, as compared to the testimony of claimant, who said he never has had, and never has mentioned, an ulcer and told MA he was injured the day he felt the "pop" in his chest.

The evidence is sufficient to support the hearing officer's decision that the claimant was injured on the job on (date of injury). The Appeals Panel will not overturn the decision of a hearing officer on a factual issue unless it is against the great weight and preponderance of the evidence. We infer a finding that claimant's chest was injured from the conclusion of law as to injury and from the testimony of claimant and medication provided him by Dr. V. We observe that the hearing officer could have found "costochondritis" rather than "costochondral," which would have indicated injury. (The Appeals Panel suggests that unadulterated documents should be offered into evidence.)

While there was no issue as to disability, evidence was presented as to the average weekly wage and carrier did not appeal the decision as to disability; therefore the decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge