APPEAL NO. 93694

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX LAB CODE ANN § 401.001 *et seq*. On May 4, 1993 a contested case hearing was held in (city), Texas, with (Hearing officer) presiding. He held the record open, without objection by either party, until July 15, 1993, and then determined that respondent (claimant) aggravated an existing neck condition when struck in the mouth at work on (date of injury). Appellant (carrier) asserts that the decision and order are against the great weight and preponderance of the evidence. Claimant replies that the evidence is sufficient to support the decision.

DECISION

We affirm.

The issue at the hearing from the benefit review conference was whether claimant injured his neck, shoulder, and back when hit in the mouth on the job with (employer). In addition, the hearing officer added the issue, upon request of the carrier, of whether claimant gave timely notice or whether an exception to the notice provision of the statute applied. (*See* Sections 409.001 and 409.002 of the 1989 Act.)

Section 410.204(a) of the 1989 Act states that the Appeals Panel "shall issue a decision that determines each issue on which review was requested."

Carrier disputes findings of fact that stated claimant aggravated a prior neck condition, that claimant injured his neck on the job, and that claimant gave timely notice and employer/carrier had actual knowledge.

The Appeals Panel determines:

That the evidence sufficiently supports the decision of hearing officer that claimant aggravated his prior neck condition on (date of injury), while in the course and scope of employment and such aggravation injured his neck.

That the claimant gave notice of injury to his supervisor on the day of the injury.

Claimant worked as a derrickman for the employer. He had gone to work just before midnight on December 11, 1992; after midnight he was draining water from a pit by use of a pump and a length of polyurethane pipe, approximately two inches in diameter, with at least one-eighth inch thick walls. (The testimony referred to this pipe as a fasline.) Pictures of a section of the pipe, admitted in evidence, show a steel connecting device on the end of the pipe. Claimant testified that he was directing the pipe (bending a section approximately 40 feet long) to make a connection when it slipped; the end hit him in the mouth as it sprang back. Claimant was not sure whether he was unconscious, but his mouth was very bloody, and he went to the area that served as an office for the derrick.

There, other employees saw his condition. One employee, (JM), was the toolpusher. As the toolpusher, JM was the "foreman" at the site, according to (JB) another employee who testified. JM stated that he was standing in the office filling out a report when claimant entered and JB asked him what happened to his lip, "and he said the fasline hit him in the lip." JM asked claimant if he were all right and was told that he was. JM was of the opinion that the injury was not serious. JM was asked:

Q.Did you report this incident about (claimant) getting hit with a fast-line to anyone else with the company?

A.No, sir. He didn't fill out no accident report or nothing.

Claimant testified that the thread part of the connection on the end of the pipe hit him in the face. It knocked out no teeth, but left the imprint of the thread on his lip after the bleeding and swelling subsided. At the time he put a cold compress on the area and took aspirin; after a while he returned to work for the hour or so until the shift was over. On December 15, his arm felt numb, and he went to the doctor.

Claimant saw his family doctor, (Dr. P) on December 15th, thinking he was having a heart attack because he also had chest pain. Tests for heart attack were negative. Claimant reported severe pain in his shoulder on (date). On December 21, 1992, Dr. P reported that claimant had pain in his arm down to his fingers and indicated that x-ray showed degenerative disc disease in the neck. Claimant indicated that he had seen Dr. P before for pain in the neck that developed without trauma; he did not make the connection between the blow and his present pain so did not tell Dr. P of the (date of injury) accident. Dr. P referred claimant to (Dr. G), a neurosurgeon. An MRI of December 28, 1992, showed degenerative disc disease (bulging discs) at C5-6 and C6-7. Claimant said that Dr. G asked him if he had been hit or fallen when he saw him in December, 1992. Dr. G stated on December 28, 1992:

The patient was advised that his symptoms are most likely related to cervical disc herniation. He has evidence of C7 radiculopathy, possibly from a C6-7 neural compression.

Thereafter, Dr. P, in March, 1993, stated:

History of cervical spine injury with degenerative disc disease and degenerative arthritis of the cervical spine and certainly is made worse if not caused by his accident.

Dr. G then added the following comment in a letter dated June 17, 1993, to claimant's attorney:

In my opinion the osteophytes and degenerative disease is a pre-existing condition that was aggravated by his neck injury sustained at work.

Claimant also testified that he had a lawn care business and a firewood business. Since the (date of injury), accident he has others do the heavy work in the lawn care business and only rides a riding lawn mower and does some weeding with a light power tool. He sold his firewood splitter in February, 1993, but had delivered his last firewood in November, 1992, prior to the accident. Carrier produced a statement from a buyer attesting to the fact that claimant was able to sell firewood in November, 1992, before the aggravation of his condition.

The Appeals Panel has indicated that when notice of an accident on the job has been given in a timely manner, the extent of the injuries stemming therefrom is a causation question for the hearing officer to decide. The reference to an injury to a particular area may be so removed in time or logic from the initial event as to result in a finding that claimant failed to show a connection between the accident and that injury. *See* Texas Workers' Compensation Commission Appeals No 92617, decided January 14, 1993, and No 93086, decided March 17, 1993. *Compare* to Texas Workers' Compensation Commission Appeal No 92503, decided October 29, 1992; this latter appeal reversed a finding of no connection of injury to the job accident and is similar in its facts to the case on appeal. The factor stressed throughout these cases is that the issue was one of causation, a fact question, for the hearing officer to decide. Notice did not control.

As stated above, the appealed question as to notice in this case evolves into a question of sufficiency to support the decision in regard to causation. Notice of injury was given to the foreman on (date of injury). Bocanegra v. Aetna Life Insurance Company, 605 S.W.2d 848 (Tex 1980), in considering a case involving election of remedies between workers' compensation and medical insurance, said, "(u)ncertainty in many complex areas of medicine and law is more the rule than the exception. It would be a harsh rule that charges a layman with knowledge of medical causes when, as in this case, physicians and lawyers do not know them." The hearing officer could consider claimant's testimony that a strong blow was incurred and that the blood covering him was consistent with his report to other employees and his foreman that a pipe, under tension that was suddenly released, hit him. He experienced arm pain within three days and shoulder pain within six, according to testimony of a fellow employee and Dr. P's records. The doctor's statements were consistent with a connection between the incident and the aggravation of his cervical problem. No evidence of other trauma was presented. While a neck problem existed prior to the date of the accident, claimant could work for employer and could sell firewood prior to that time. The appeals panel has not held that a claimant is obligated to tell his employer all the ramifications of an injury, possibly unknown to him at that time, when giving notice. *See* Bocanegra, *supra*.

The evidence sufficiently supports the findings of fact that claimant was struck at work, that the blow aggravated a neck condition, that the claimant's neck was injured by the blow, and that the claimant gave timely notice. The decision and order are not against the great weight and preponderance of the evidence and are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge