APPEAL NO. 93709

This appeal is brought pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 20, 1993, with the hearing and record closing on June 10, 1993, in (city), Texas, (hearing officer) presiding as hearing officer. The issues at the CCH relevant to this appeal were whether the appellant (claimant) sustained an injury (right and left inguinal hernias) in the course and scope of his employment on (date of injury); whether the claimant gave timely notice of this injury to his employer; and whether (and if so, for what period of time) he had disability as a result of this injury. The hearing officer found against the claimant on each of these issues.

The claimant seeks reversal of this decision on the basis that he did sustain his hernia on (date of injury). The carrier responds that the decision is correct and that the claimant failed to meet his burden of proof.

DECISION

We affirm the hearing officer's decision.

The claimant's job included driving a cement truck. On (date of injury), he fell while climbing out of the truck cab and injured his right ankle[1]. This injury was considered by the carrier to be in the course and scope of employment and medical benefits were paid. The claimant did not lose any work because of it until November 12, 1991, when he was taken off work by (Dr. Q), his treating physician. He received temporary income benefits (TIBS) until September 30, 1992, when (Dr. G), another treating physician, returned him to work.

On (date of injury), the claimant testified that his right ankle collapsed and he fell as he was climbing a stairway (described also as a ladder) while working for the employer. He felt a pain in his groin area and went to the employer's on-site infirmary, but it was closed. The next workday, the claimant told his supervisor, (TQ), what happened. Both parties to this conversation spoke Spanish. The accounts of what was said vary. TQ insists that the claimant only mentioned that he experienced pain in the area of his right hip while climbing up and down stairs. When asked, claimant did not relate this pain to any specific event. There, however, was some discussion about whether this should be treated as a separate incident, at least for insurance purposes, with the claimant somewhat resisting that idea. TQ sent the claimant to the infirmary where the attending nurse set up the November 12, 1991, appointment with Dr. Q. Claimant was accompanied by TQ. The claimant complained to Dr. Q not only about foot pain, but also about pain in his right hip, and discomfort in his right groin area. Dr. Q specifically examined the claimant for hernias and found none.

On April 10, 1992, Dr Q recommended that the claimant be evaluated by a general surgeon for a possible hernia. The claimant was referred to (Dr. M) who on July 16, 1992,

[1] The carrier concedes that this injury later caused pain and deterioration of the claimant's hip.

diagnosed a left and right inguinal hernia.

Dr. G released the claimant to return to work on September 30, 1992. He did this from an orthopedic perspective only and deferred to Dr. M's judgment the question of what effect claimant's hernias had on his ability to return to work. On this same date, the claimant submitted an "Employee's Notice of Injury or Occupational Disease and Claim for Compensation" (TWCC-41) in which he described his injury as "hernia" and listed the date of injury as (date of injury), with lost time beginning on November 11, 1991. The carrier stopped paying TIBS based on Dr. G's statement that, insofar as the ankle problem was concerned, claimant could return to work on September 30, 1992. By undated Notice (TWCC-21), received by the Commission on December 28, 1992, the carrier disputed the claim for hernia injuries based on failure of timely notice and lack of injury in the course and scope of employment.

The relevant determinations of the Hearing Officer are:

FINDINGS OF FACT

12.On (November 11, 1991) the Claimant spoke with (TQ) and explained his ankle pain to him, but the Claimant did not report a new injury to (TQ) or anyone else in 1991.

21.The Claimant did not complete his first notice of injury with respect to the claimed accident of (date of injury), until nearly eleven months after the date of the claimed injury.

29.There was no credible information to show that there was a new injury on (date of injury).

30.There was no credible medical information to show the cause and source of the Claimant's hernias.

31.The medical information provided by the Claimant did not connect the Claimant's hernias with the claimed injury of (date of injury), or any other event.

32.The Claimant did not have a new compensable injury on (date of injury), and he could not have had associated disability as a result of that claimed injury.

CONCLUSIONS OF LAW

5.The Claimant did not sustain an injury, i.e., hernias, in the course and scope of his

employment on (date of injury).

6. The Claimant did not have disability as the result of a claimed injury on (date of injury).

The claimant contends that the incident of (date of injury), was separate and distinct from his ankle injury of (date of injury), and was the cause of his hernias. The claimant in a worker's compensation case has the burden to prove that he sustained a compensable injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Injury may be proven by the testimony of the claimant alone and objective medical evidence is not required to establish that a particular activity resulted in the claimed injury, except in those cases where the subject is so technical in nature that a fact finder lacks the ability from common knowledge to find a causal connection. *See* Texas Workers' Compensation Commission Appeal No. 93577, decided August 18, 1993. Lay testimony may even, in some circumstances, outweigh or overcome expert medical testimony. *See* Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer, as the finder of fact in a worker's compensation case, is the sole judge of the materiality of the evidence and of its weight and credibility and resolves inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Claimant contends that his hernias were caused by his (date of injury), fall, and that the only pain he had that day was in his groin. The medical evidence introduced by the claimant reveals that Dr. Q, because the claimant complained of pain in the general area of his right groin, specifically examined him for a possible hernia and found none. Dr. Q also concluded that his hip condition could have caused the groin pain. Contrary to the assertion of the carrier in its request for review, the Appeals Panel has never held that a causal connection between an on the job accident and a subsequent hernia can only be proved by expert medical evidence.[2] Nonetheless, in this case, where the claimant admitted in his testimony that he was only speculating that the fall caused the hernia; where significant medical evidence was inconsistent with the claimant's view of causation; and where the connection between a fall and the hernias is difficult to ascertain, the claimant's

[2] In this regard Texas Workers' Compensation Commission Appeal No. 92092, decided April 27, 1992, is clearly distinguishable. That case dealt with repetitive injury, not a discrete event claimed, as in the case under appeal, to have caused the hernia.

testimony at most raises a question of fact. *See* Texas Workers' Compensation Commission Appeal No. 93390, decided July 2, 1993. The hearing officer carefully reviewed this evidence. Because his finding was not against the overwhelming weight of the evidence as to be clearly wrong and unjust, we will not disturb it on appeal.

Finally, for purposes of this appeal, the claimant contends that he has disability as a result of his (date of injury), accident. The 1989 Act defines disability as the inability to obtain and retain comparable work "because of a compensable injury." Section 401.011(16). The hearing officer's finding's on the existence of an injury and notice therefore resolve the question of disability, and are affirmed.

Finding no reversible error and that the hearing officer's decision is not so against the great weight and preponderance of the evidence as to be manifestly unjust, we affirm.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge