APPEAL NO. 94107

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On November 8, 1993, a contested case hearing (CCH) was held. The issues presented to the hearing officer for resolution were:

1. Whether Claimant's condition of Syringomyelia was related to this (date of injury), injury; and

2. Whether Claimant had disability from (date of injury, to the present.

The hearing officer determined that the appellant's (claimant herein) condition of syringomyelia (SM) was not the result of any injury which occurred in the course and scope of employment and was not related to claimant's (date of injury), injury. The hearing officer further determined that claimant had disability (apparently from carpal tunnel syndrome which was not contested) from (date of injury), through March 7, 1993, but did not have disability from March 8, 1993, through December 22, 1993.

Claimant contends that the hearing officer erred in her decision that the SM was "not aggravated by claimant's work injury" and the hearing officer's decision was contrary to several doctors who had opined there was a connection. Claimant is also critical of the ombudsman for failing to present a rebuttal argument after the carrier's closing statement. The claimant requests that we carefully review the medical records and by implication asks that we reverse the hearing officer's decision and render a decision in his favor. Respondent, carrier herein, responds to claimant's appeal, essentially reiterating its closing argument at the CCH and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

Claimant, a plumber, testified about an incident which occurred before Christmas 1991, where he slipped off a plank and "sunk into mud to about my thigh" while carrying a "12-inch cast-iron" pipe on his right shoulder. Claimant admits this incident was never reported. Claimant stated he continued working with pain for a month and a half, eventually being transferred to another job for reasons unrelated to this claim. Claimant was working for (company), employer herein, in February (year), "putting . . . drains inside the building." Claimant testified he had been working this job "about three weeks to a month" when his "arms started to burn and my hands started hurting." Claimant testified that he felt "something was wrong" and that his wife talked him into going to the hospital. Claimant went to the emergency room (ER) on February 25, (year), and the date of injury was subsequently designated to be (date of injury).

Claimant was seen in the ER on February 25th, by Dr. F who noted a history of "pain and numbness in hands" and diagnosed "possible bilateral carpal tunnel syndrome

[CTS] possible HTN [hypertension]." Claimant was referred to Dr. A. Dr. A, in a Specific and Subsequent Medical Report (TWCC-64), dated March 6, (year) (dates of medical reports will be (year) unless otherwise noted), referred to a bilateral carpal tunnel release, which was performed on March 2nd, and continued to focus on the CTS. In a TWCC-64 dated March 20th, Dr. A, apparently for the first time, commented on SM stating claimant was being referred out for an "opinion regarding [SM]." Claimant's testimony was that he had gotten some relief from the CTS release but that in a few months the pain, burning sensations and numbness in his neck, hands and arms returned. Dr. A in a TWCC-64, dated April 14th continued to focus on the CTS.

Dr. R performed the bilateral carpal tunnel release on March 2nd. In Dr. R's operative report, dated March 2nd, he gives a preoperative diagnosis of "Bilateral [CTS]; syringomyelia in the cervical thoracic area." The report includes a brief history and operative details. In an Initial Medical Report (TWCC-61), dated March 23rd (for a March 17th visit), Dr. R commented on the CTS release and recommended physical therapy (PT). In a report dated April 14th, Dr. R notes that claimant should stay in PT ". . . since he also has an associated [SM]." April 14th is the last time claimant saw Dr. R, who in a report dated August 31, 1993, stated about claimant, in April (year):

> At that time the patient's diagnosis included dead syringomyelia and also carpal tunnel syndrome. I treated him for the latter and performed bilateral carpal tunnel releases on 3-2-93, which improved his symptoms significantly. In any event the imaging studies shows [sic] syringomyelia. I do not think it was the result of his injury on the job, but his symptoms were the result of an injury. In other words the symptoms of syringomyelia were aggravated by his on the job injury.

Claimant's position, at the CCH and on appeal, is that his SM was aggravated by his on-the-job injury.

Claimant was also seen by Dr. C who, by report dated April 7th, continued to focus on claimant's bilateral CTS. Dr. C comments that he believes the CTS to be "work related." Dr. C apparently referred claimant to Dr. E who saw claimant for the first time on May 6th. Dr. E comments on claimant's recurrent residual pain, "etiology unknown" and continues to focus on "residual [CTS]." Dr. E notes he does not have claimant's records or operative report. Dr. E, in a follow-up report dated May 20th, states:

> I find that he has been treated for a syringomyelia by a neurologist. The neurologist has explicitly stated he needs follow-up. There is a question of possible progression of his syringomyelia. This needs to be reinvestigated. PLAN: Will get him an appointment for a neurologist in Dallas and follow him back in two weeks. If he is having symptoms from the syringomyelia, this would explain why he is not recovering as normally as he should for his bilateral carpal tunnel syndrome.

In a June 15th follow-up progress note Dr. E notes claimant "slipped and fell (date of injury) stated he hurt his incision c/o `blood blister.'" Claimant testified he had slipped on some mossy rocks near a stream by his home and fell. Claimant in latter May was apparently referred to Dr. H, a neurologist.

Dr. H, in a May 29th report, had as his impression: "1) Myelopathy. I suspect that he has got something going on in his thoracic spinal cord. I want to get the MRI scans. He said that they told him he had syringomyelia. After I get these films, I will make further recommendations." In a January 8, 1993, report Dr. H in commenting on claimant's symptoms of pain stated "he, of course, also has SM." In a subsequent September 17, 1993, report Dr. H notes his impressions:

1) Syringomyelia. This may be a little worse and I would agree with Dr. M's plan to shunt this.

2) Carpal tunnel syndrome. This probably takes a back seat to the syringomyelia at this time.

3) Hypertension, and he is supposed to get this under control.

In a September 21, 1993, report Dr. H states the "[SM] is progressing . . . surgery is indicated at this time on the [SM]."

The record contains a brief report from Dr. L dated September 23rd, which indicates claimant, in addition to other problems "also has a very marked scoliosis in the cervical, upper dorsal spine." Dr. L believes all of claimant's problems are due to his SM and if he had CTS it was due to SM. Dr. L summarizes ". . . this patient's problem, unfortunately for him, is [SM] and has no connection to the on the job injury as stated previously."

The record reflects only one report from Dr. M, that being a letter report from Dr. M to Dr. H dated June 4, 1993. In that report Dr. M discusses symptoms, medications, results of testing and concludes that claimant has "myelopathy secondary to [SM]." In response to claimant's family Dr. M, in the report, stated that the "injury in (year) with heavy lifting aggravated [claimant's] condition. . . ."

Carrier made a request for a Medical Examination Order (MEO) and by Texas Workers' Compensation Commission (Commission) order of January 11, 1993, Dr. F was appointed as a MEO doctor to provide "a second opinion with regard to the relationship of the diagnosis to the on the job injury." The record is not clear about the report made pursuant to that order, nonetheless, Dr. F, in a report dated March 8, 1993, reviewed claimant's history, records various tests and examination results and concluded "I believe he has idiopathic type [SM]." Dr. F comments:

> However, the patient requires a MRI of the head to rule out Chiari malformation and also a MRI of the cervical spine with gadolinium to rule out tumor should there not be a Chiari malformation. I do not believe he has cord indentation. Etiology of the syrinx is difficult to tell but it is probably idiopathic and congenital. It is my opinion that he has developed cervical myelopathy due to the indentation of the cord. I believe that he would benefit from the surgical decompression. This would consist of anterior cervical discectomy and fusion at C3/4, C5/6 and C6/C7. I have told him that if he underwent this he may not improve. This may just halt the progression of his problems. As to whether or not he ever had carpal tunnel syndrome, it is extremely difficult to render an opinion. At the present time there is no tineal sign. There is no evidence of carpal tunnel syndrome. His incisions are extremely well healed. I do not believe that it is a necessity to re-explore these wounds.

Dr. F, in response to carrier's deposition on written questions, defined SM as "a cyst in the spinal cord," listed causes of SM as "1. tumors 2. congenital 3. trauma," and commented he had treated "over 80 patients operated on." Dr. F stated that in his opinion claimant could have had his symptoms as a result of SM without trauma or CTS. In a March 8, 1993, letter to carrier's adjustor, Dr. F stated:

> 1) I do not believe that his syringomyelia is related to his job.
>
> 2) I do feel that his condition was aggravated by his work injury.
>
> 3) I doubt that he has carpal tunnel problems and I do believe that his hand problems are due to his syringomyelia.
>
> As far as disability is concerned, it is difficult to tell. His syringomyelia is a non-operative entity and there is no surgical indication at this time. I believe that this is a congenital condition.

Dr. F, in a letter dated April 7, 1993, to carrier's adjustor, comments:

> His spondylosis is not due to his work related injury. Rather, I believe that carrying heavy piping on his right shoulder caused him to have pain and somewhat aggravated a pre-existing situation. The syringomyelia is not related to his job and his hand problems are due to his syringomyelia. I do not believe that you should be responsible for any eventual surgery for his syringomyelia and neither do I believe that you should be responsible for surgery for his cervical spondylosis. However, perhaps your responsibility should be related to ancillary treatment such as physical therapy.

We would note in passing that Dr. F's opinion on what carrier should or should not "be

responsible" for does not carry much, if any, weight. Dr. F, by letter dated April 30, 1993, responds to a Commission benefit review officer:

> In answer to your letter of April 23, 1993, I do not believe that his work conditions of carrying heavy objects on the shoulders of [claimant] aggravated the syringomyelia. Neither do I believe that it aggravated his cervical spondylosis.

Subsequently, by letter dated June 15, 1993, the Commission appointed Dr. W to "determine whether the [SM] or the cervical spondylosis were caused or aggravated by [claimant's] work related injury of (date of injury)." By report dated July 2, 1993, Dr. W reviewed claimant's history, and his neurological examination. Dr. W gave as his impression "[SM] C3-7 . . . based on reports of other physicians." Dr. W concluded: "It is my feeling that his workers' comp injury did not cause his syringomyelia but certainly could have aggravated it and helped produce the symptoms in the manner which he describes his discomfort." In response to further inquiry Dr. W, by letter dated August 4, 1993, stated:

> Certainly the injury did not cause syringomyelia. I do not think that, I do think this is a progressive thing that has come over a period of time.
>
> However, any injury to the neck could aggravate an existing syringomyelia. Certainly, if there was significant cord damage at the time of the injury which I don't think there was in this case. The end result of significant cord damage would also be syringomyelia.
>
> All-in-all, I feel that perhaps his injury could have aggravated this existing condition but certainly did not cause it in my opinion.

Dr. W, in answer to a deposition on written questions, said he had not published any articles on SM and had only treated "probably half a dozen" patients with SM over the years.

Both parties offered articles on SM which were admitted. Claimant's article on SM is "Syringomyelia" by the American Syringomyelia Alliance Project, Inc. Carrier's article is from "Orthopaedics Principles & Their Application." The articles are in general agreement with each other. Some excerpts are:

> *Syringomyelia*, often referred to as SM, is an Orphan Disease. Orphan Diseases are defined as chronic, rare conditions that affect fewer than 200,000 Americans.
>
> * * * * *
>
> Defined simply, *Syringomyelia* is a chronic and progressive disorder that primarily involves the spinal cord. For unknown reasons, a cavity (syrinx) develops in the spinal cord. As cerebro-spinal fluid leaks into the cavity, it

causes a pressure buildup inside the cavity and forces an expansion of the cavity. As the cavity expands, it damages the adjacent nerve fibers in the spinal cord causing loss of strength, loss of function and loss of sensation in the body systems affected by the disruption of the nerve fibers.

* * * * *

Mistaking SM for other diseases was commonplace until recently. Many doctors were unfamiliar with SM so the patient went from one doctor to another looking for answers while their condition degenerated.

and

Syringomyelia is a slowly progressive disease of the spinal cord and the medulla oblongata that is caused by cavitation and gliosis and is characterized clinically by dissociated sensory loss and muscular atrophy.

ETIOLOGY

The cause of true syringomyelia is unknown. . . .

* * * * *

CLINICAL PICTURE

The onset is insidious. Weakness and atrophy of the intrinsic muscles of the hands are often the initial symptoms and findings. Pain (sharp, shooting, or burning) throughout the upper extremities is common. The loss of painful sensation is first disclosed by unnoticed burns and injuries.

* * * *

PROGNOSIS

Although slowly progressive, the disease may become stationary at any time. . . .

TREATMENT

Drainage of the cavity is indicated. . . .

Based on the evidence presented the hearing officer determined that claimant's SM was neither caused by nor aggravated by any incident on or about (date of injury), that claimant's SM was an ordinary disease of life, and that claimant had disability from (date of injury), through March 7, 1993 (presumably due to the CTS for which carrier has accepted liability), but not from March 8, 1993, to the date of the CCH.

Claimant believes that he was dealt with unfairly because the hearing officer failed to address claimant's CTS, that the SM was aggravated by his work as evidenced by "several of my doctors." Claimant particularly refers us to Dr. R's, Dr. M's and Dr. H's reports and alleges error in that the ombudsman, in rebuttal, failed to point out that areas in Dr. F's report appeared to be contradictory.

Addressing the role of the ombudsman first, we note that the role of the ombudsman is to assist an unrepresented party to enable them to protect their rights. Section 409.041. The hearing officer on occasion asked the claimant if he had anything else he wanted to say during his testimony and asked the claimant if he had anything further to offer in rebuttal. Claimant did not. The ombudsman made a closing argument in claimant's behalf followed by a closing argument by the carrier. There was no need or requirement to present further argument.

The threshold issue is whether claimant's alleged repetitive trauma injury (of carrying heavy pipe) aggravated his SM. The doctors are in general agreement that trauma did not cause claimant's SM, but the evidence whether claimant's SM was aggravated is more conflicting.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). An injury is defined in Section 401.011(26) of the 1989 Act as "damage or harm to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm." An ordinary disease of life to which the general public is exposed is not compensable. *See* Texas Workers' Compensation Commission Appeal No. 93744, decided October 1, 1993. To be compensable, the claimant must link the alleged injury to an event at the work place and establish a causal relationship between the injury and the employment. Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, (year). Generally an injury may be proved by the testimony of the claimant alone and medical evidence is not required to establish that a particular job-related activity caused the claimed injury, except in those cases where the subject is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. *See* Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, (year). We believe that this case is one of those cases where the medical condition, SM, is so rare or uncommon that expert medical evidence is necessary to establish causation between claimant's disease and his work. *See generally* Houston General Insurance Company v. Pegues, 514 S.W.2d 492, Tex Civ. App.-Texarkana 1974 writ ref'd n.r.e.). In fact, what makes this case so complex is that SM is such an uncommon condition that it would appear at least one or two of claimant's initial doctors misdiagnosed claimant's condition. Aggravation of a pre-existing condition can be a separate and compensable injury even though the underlying condition that was aggravated may not be compensable. Texas Workers' Compensation Commission Appeal No. 91038, decided November 14, 1991. An "aggravation" to be compensable must be a new injury and not merely a transient increase in pain from an existing condition. *See* Texas Workers' Compensation Commission Appeal No. 92463, decided October 14, (year). Claimant's testimony was that in February (year), he began having increased "burning pain" and numbness in his arms and hands. No specific new episode is attributed to this increased pain other than carrying heavy plumbing materials into the building on which claimant was working.

Apparently claimant initially attributed this pain to the December 1991 incident. When claimant went to the ER he was initially diagnosed a having CTS. Dr. R was apparently the first doctor to recognize SM might be involved but apparently decided to release the carpal tunnel and see how much response claimant got.[1] Neither Dr. R nor Dr. H gave an opinion as to causation. Dr. M in his June 4, 1993, report stated to claimant's family "that his injury in (year) with heavy lifting aggravated [claimant's] condition. . . . " We note that the doctors who do state that the SM is work related offer little corroborating rationale about how the lifting would aggravate a spinal cyst.

The experts in this exotic area appear to be Dr. F, carrier's MEO doctor, who has treated approximately 80 cases, and Dr. W, who carrier refers to as a designated doctor and whose "presumptive weight" opinion carrier, both at the CCH and in response to claimant's appeal, argues has been over come by the great weight of evidence to the contrary.[2] Although the record does not clearly identify Dr. L, he also gives a definitive opinion on causation.

Dr. F, in his March 8, 1993, report expresses the opinion that etiology of SM is difficult to ascertain but he believes claimant's SM is congenital. In essence all of Dr. F's reports and letters could have led the hearing officer to the conclusion that claimant's SM "is not related to his job." Although Dr. F states "I do feel that his condition was aggravated by his work injury" he apparently doubts claimant had CTS and attributes all claimant's problems to his SM. In an April 7, 1993, report Dr. F stated "carrying heavy piping . . . somewhat aggravated a pre-existing condition." Dr. F stated "The [SM] is not related to his job and his hand problem are due to his [SM]." Dr. W confirmed claimant's injury did not cause his SM "but certainly could have aggravated this existing condition [referring to the SM] . . . . " Dr. L is the most unequivocal in stating claimant's problem ". . . unfortunately for him, is [SM] and has no connection to the on-the-job injury. . . . " Given this conflicting and even seemingly contradictory evidence the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165 (a)) has the duty to resolve conflicts and inconsistencies in the evidence. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, (year); Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, (year). *See* Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This equally applies to situations where medical evidence is in conflict. *See* Highlands Underwriters Insurance Company v. Carabajal, 503 S.W.2d 336, 339 (Tex. Civ.

[1]*See* Carrier Exhibit No. 4 which is merely labeled "medical records" but apparently were generated by a Dr. S.

[2]We note that Dr. W was only appointed to render an opinion on causation and was not a designated doctor for purposes of maximum medical improvement (MMI) or impairment rating. A designated doctor's opinion is only entitled to presumptive weight on issues of MMI and disability and is not entitled to presumptive weight on questions of causation. Texas Workers' Compensation Commission Appeal No. 92617, decided January 14, 1993.

App.-Corpus Christi 1973, no writ). Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer obviously believed so much of Dr. F's reports and Dr. L's report which indicated claimant's SM was neither caused nor aggravated by carrying pipe or any work condition. We could also note that claimant is not claiming any "new injury" and merely says the aggravation was a repetitive trauma. The hearing officer could have found that claimant's pain in February (year) was merely a transient increase of pain from the December 1991 incident.

Claimant further contends as error that the hearing officer did not mention his CTS. Although the hearing officer made no specific findings of fact or conclusions of law mentioning CTS, the hearing officer in her discussion mentioned:

> The carrier did not contest compensability of the carpal tunnel syndrome and has paid some temporary income benefits (TIBS), although the Claimant's problem is probably not carpal tunnel syndrome, but syringomyelia. Furthermore, as of March 8, 1993, the Claimant had no evidence of carpal tunnel and his incisions were extremely well healed. [CR-EX-O].

Further, the hearing officer, after determining that claimant's SM was neither caused by nor aggravated, by "any incident or occupational exposure" on (date of injury), nonetheless proceeded to find that claimant had disability (was unable to obtain and retain employment at the pre-injury wage because of a compensable injury), from (date of injury), through March 7, 1993. Reading the hearing officer's determinations in conjunction with her discussion we believe that the hearing officer assigned disability from (date of injury, through March 7, 1993, to claimant's uncontested CTS. The hearing officer apparently picked March 7, 1993, as the ending date of disability based on Dr. F's March 8, 1993, report which said that on that date there was no evidence of CTS and the incisions were extremely well healed.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or so against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not so find and consequently the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge