APPEAL NO. 94231

This appeal is considered in accordance with the Texas Workers' Compensation Act (1989 Act), TEX. LAB. CODE ANN. § 401.001 *et seq.* On January 5, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issues to be determined were whether the claimant, JV, who is the respondent, sustained a compensable injury on (date of injury), and whether she reported an injury to her employer no later than the thirtieth day after the injury (and if not, if there was good cause for not timely reporting). A third issue was added by agreement of the parties: whether claimant's prolapsed uterus was a result of a compensable injury suffered on (date of injury)?

The hearing officer determined that the claimant had injured herself in a fall at work on (date of injury), and that her prolapsed uterus "was caused" by her fall at work. He further found that she called by (date), to inform her supervisor that she was injured at work, and therefore gave timely notice.

The carrier has appealed numerous findings of the hearing officer's decision. The carrier also argues that there is no evidence to support the conclusion that claimant sustained a prolapsed uterus because of a work-related fall some seven months earlier. The carrier argues that if the injury determination were upheld, then the liable carrier is the employer's carrier on August 1993, a different company. Carrier argues that the prolapsed uterus was an ordinary disease of life. Finally, carrier disputes that timely notice of injury was given. The claimant responds that delayed manifestation of the results of a compensable injury does not change the date of injury to a later time, and that carrier is liable for the prolapsed uterus to the extent it was caused by the (date of injury), fall. Claimant argues that medical evidence supports her claim. Claimant also argues that timely notice was given. Claimant asks that the hearing officer's decision be upheld.

DECISION

We reverse the decision of the hearing officer, and render a new decision that claimant injured her right ankle and knee in a fall on (date of injury), and gave timely notice thereof, but that the finding that she sustained injury resulting in a prolapsed uterus is against the great weight and preponderance of the evidence. We affirm the hearing officer's determination that timely notice was given.

The claimant, who worked for (employer) on the midnight to 8:00 or 9:00 a.m. shift, stated that she slipped and fell in some water the morning of (date of injury). She landed in a sitting position, with her left leg straight out as if doing the "splits," and her right leg folded under her. Claimant was wearing tennis shoes, and stated that her right heel contacted her groin area. She also bumped her knee. Claimant said she went to the bathroom 15 minutes later and noticed that she had some blood coming from her vagina. In a deposition by claimant that is part of the record, the bleeding is characterized as minimal, lasting a day and a half. Claimant stated that she called her boss, (Mr. B), on

January 28th[1] to tell him she hurt herself when she fell at work. Claimant said Mr. B told her he wasn't going to pay. However, she said he then asked that any doctor bills be sent to him. She said that her understanding was that he would pay. Claimant said (and later Mr. B confirmed) that she did not have medical insurance, and the only medical coverage available was through workers' compensation.

Claimant continued to work and first saw a doctor February 26, 1993. An initial medical report filed by (Dr. R), an associate of (Dr. S), on that date indicates that claimant was treated for knee sprain. The doctor's notes for that visit also mention ankle strain, characterized as mild. Claimant says she reported her vaginal bleeding, but Dr. R said he was only going to treat her ankle and knee. Claimant continued to work until July 23, 1993. The doctor's notes for that day indicate ankle pain. She stated that after that date she stopped working because of the pain in her ankle and knee. The doctor's notes state that her ankle and knee still bother her; there is no swelling noted and range of motion is normal.

According to claimant, on (date), she was walking from her mother-in-law's home to her own house when she felt something "drop." At her house, in the bathroom, she felt a bulging through her vaginal area. She went to Dr. S's office on August 13th and again on August 17th. Claimant stated that she was told she had a prolapsed uterus.

Claimant, whose medical records indicate was 47 years old, stated that she had nine children delivered non-surgically. Her youngest child was 19; the oldest was 28. Claimant said she requires a hysterectomy. She testified that her reason for being off work was due to her uterine condition and not her ankle or knee.

The testimony on the history of claimant's uterine problems is not entirely clear; in her initial presentation of her case, the claimant testified that prior to (date), she had never felt heaviness in her uterine area. This was contradicted by a deposition by claimant, put into evidence, that she began to feel a heavy sensation in her lower abdomen in April or May, 1993. Then, on cross-examination the carrier submitted records indicating that claimant had been hospitalized at Citizens Medical Center in (date), and diagnosed as having enlarged and retroflexed uterus. Claimant said she went to the emergency room thinking she might have an ulcer. The admission diagnosis was severe anemia. A history of heavy menstrual periods was noted and the fact that she had a heavy one while in the hospital was noted. Her plan on discharge stated: "The patient was told to find a family practitioner to further evaluate her slightly enlarged uterus and uterine bleeding." The notes indicate that she said that she would.

The claimant denied being told during hospitalization or upon discharge that she had a uterine condition or that she should check with her physician. She said only that they couldn't find anything wrong with her. When the hearing officer posed the same question, claimant stated that she could not "recall" being told she had a retroflexed uterus. Claimant

[1]Notwithstanding this testimony, the hearing officer used January 29, 1993, as the date "by" which notice was given.

testified that she sought no medical treatment related to abdominal or uterine problems prior to her (date) episode.

On redirect, claimant's attorney asked her if the sensations she felt on (date) were similar to those she felt in (date) and claimant answered yes, and then said the similarity was the heaviness in the abdominal area. Claimant's attorney also directly asked: "Ma'm, you're not denying today that you had a prolapsed uterus prior to the injury on (date of injury), are you." Claimant responded, "No, I'm not denying it." She agreed that it was her understanding that the injury was "triggered" by the fall.

Presumably, a primary source of this understanding comes from a consultation, October 6, 1993, with (Dr. J), a obstetrician/gynecologist to whom she was referred by Dr. S. She stated in her deposition that Dr. J did not know her prior medical history. At the hearing, the history form claimant completed before her examination by Dr. J was submitted and no mention is made of uterine problems prior to January 1993. Dr. J's letter recited the fall as involving claimant's heel going up into her vaginal area. Dr. J's letter noted a cystourethrocele (prolapsed bladder) as well as symptomatic pelvic relaxation with significant uterine descensus and uterine prolapse. He noted an unusual scar on her genitalia which he felt certainly could have been caused by the (date of injury) accident as described by claimant. Dr. J went on to say:

> The temporal relationship of onset of symptoms suggests the possibility of association with alleged fall at work. The presence of the scarring on the vulva and mons pubis lends credibility to this. Certainly, this patient would be at risk for these lesions based upon her grand multiparity status with nine vaginal deliveries. However, the temporal relationship of onset of symptoms is a strong argument for causative factor from the fall.

Claimant says that Dr. J told her she had torn a ligament in her uterus that made it weak. She said it was her understanding that her bleeding in January could have come from that.

Mr. B agreed that claimant called him on or about (date) and told him she fell. His understanding was that her ankle and leg were hurt. He believed he had received medical bills and turned them in to his insurance agent. The first Mr. B heard about her uterine condition was in August, when she brought a light duty release to him.

The hearing officer makes no precise findings as to what claimant's injury on (date of injury) was, nor are claimant's ankle and knee mentioned in his findings and conclusions. The evidence certainly supports the fact of an injury to claimant's ankle and knee, and timely notice.

The great weight and preponderance of the evidence, however, is against a finding that such injury included claimant's prolapsed uterus, or that her uterine condition "was caused" by the fall. The strongest evidence in favor of claimant is Dr. J's report. Leaving

aside its somewhat speculative terms, the opinion was clearly based upon assumptions about the onset of symptoms that claimant's own testimony contradicted. Dr. J's letter records that the "onset" of claimant's symptoms followed the fall. Claimant herself, however, agreed that she felt abdominal heaviness in (date) like that she felt in August 1993. Dr. J was unaware of this, or her previous hospitalization, when he examined her.

Dr. J acknowledges that claimant was, due to multiple vaginal deliveries, more susceptible to the conditions he observed. The letter nowhere mentions a conclusion that claimant tore a ligament. The etiology of how the uterus could manifest a prolapse nearly seven months after such a fall is nowhere described, and Dr. J's sole basis for the "possible" connection is the "temporal relationship." While we note that Dr. J focuses on an unusual scar, this is a fact that corroborates claimant's fall, not that the prolapsed uterus also occurred at that time. (The scar arguably supplies an explanation for the blood observed by claimant at the time of her fall.) The Appeals Panel has previously noted that chronology alone does not establish a causal connection between an injury and a later manifested consequence. Texas Workers' Compensation Commission Appeal No. 92331, decided August 28, 1992. While we do not think that in every case the link between trauma and internal gynecological damage calls for expert testimony, we do believe that in a case where there is no manifestation for well over half a year presents a situation where linkage is beyond common experience, and medical evidence should be submitted which establishes the connection as a matter of reasonable medical probability, as opposed to a possibility, speculation, or guess. *See* Houston General Insurance Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.- Texarkana 1974, writ ref'd n.r.e.); Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). Dr. J's opinion in this case, based upon incomplete facts, amounts to no more than speculation or a possibility.

Recognizing that aggravation can be an injury in its own right, we do not believe the standard of proof to be any less in this case. Claimant "did not deny" that she had a prolapsed uterus before her fall. Given that, it was also incumbent upon her to show that the fall caused or contributed to a worsening of the condition, to shift the "sole cause" burden to carrier. The evidence in this case is that the fall had remarkably little immediate affect. Even claimant's most favorable testimony was that she first experienced abdominal heaviness after her fall in April 1993 at the earliest, but it was also a feeling she had experienced prior to the fall. There is essentially no evidence that the fall caused a pre-existing condition to worsen such that it led to the prolapse. There was no direct medical evidence that claimant tore a ligament.

We recognize that the hearing officer is the sole judge of the relevance, the materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or 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.). As to the finding that the extent of injury in this case includes the prolapsed uterus, the posture of the evidence is so weak that the determination of the hearing officer requires reversal.

On another matter, we would note that claimant's own argument was that she was not diagnosed with a prolapsed uterus until after (date). It was therefore impossible for her to have given notice of that injury in January 1993. It would have been more appropriate for the hearing officer to analyze notice for the prolapse in terms of whether claimant had good cause for not giving timely notice. Arguably, additional notice is required when an injury is not one readily apparent as disease or harm "naturally resulting" from an injury to the ankle or knee, as set out in the definition of injury in Section 401.011(26). We do not need to reach this issue under the circumstances of this case, because the record indicates prompt notice to Mr. B following the diagnosis. The elements of good cause with respect to the prolapse would appear to be present. Nevertheless, there is sufficient evidence to support the finding of timely notice and it is affirmed.

To the extent that the uterine condition is argued to be the result of a fall, it is not an ordinary disease of life. If we agreed that the condition was linked to the fall, that carrier would be the liable entity even though the condition manifested itself after another carrier assumed coverage for the employer. Section 406.031(a).

For the reasons cited above we reverse the hearing officer's determination that claimant sustained a compensable uterine condition, and render in its place that claimant sustained a compensable injury to her right ankle and knee on (date of injury), and the carrier is liable for benefits due to that injury, but not due to the uterine condition. We affirm his determination that timely notice was given.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge