

APPEAL NO. 950124

Following a contested case hearing held in _____, Texas, on December 27, 1994, the hearing officer, _____, resolved the three disputed issues by concluding that the respondent (claimant) sustained a compensable injury on _____, that the appellant (carrier) specifically contested compensability, and that the claimant had disability from August 12 through September 14 and from September 23 through November 9, 1994. Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 410.202(a) (1989 Act), the carrier has appealed on sufficiency of the evidence grounds from the hearing officer's determinations of the compensable injury and disability issues. No response was filed by the claimant.

DECISION

Affirmed.

Claimant testified that on _____, while working at a lumber store, he was carrying an 80-pound sack of concrete mix, tripped over a pallet and dropped the sack. He said he did not fall but lurched forward and his neck "popped." He did not think it serious at the time and continued to work; however, by August 9th he had pain which started in his neck and ran down his left arm, which he described as "going dead." Claimant maintained that he told his supervisor, Mr. RC, about his job-related injury on _____, that he continued working, and that on _____ and again on _____ he advised the company president, Mr. JC, of his job-related injury. Claimant said that on August 12th he saw Dr. RD who treated him and took him off work from that day through September 14th after which he was released to return to work.

Claimant further testified that after returning to work on September 15th he began having headaches, nosebleeds, the feeling that his face was burning, and back pain, and that the pain moved from his neck through his shoulders into his back and down his leg. He said he continued working until September 22nd on which date his employment was terminated by Mr. JC following some confrontation. Claimant also indicated that on September 22nd he went to his physical therapy (PT) session, that the PT could not be accomplished, and that he was sent to Dr. RD. Dr. RD's records show that claimant was seen on September 22nd and gave a history of: "went back to work but couldn't work. He tried it 2-3 days and he continued to get worse and worse as far as pain in his left side."

Another September 22nd note of Dr. RD reflected that claimant's symptoms had recurred with return to work. Dr. GD consulting report of September 26th stated that claimant had "returned to work for one week but was not able to tolerate it." Although the evidence did not indicate whether or when claimant was again taken off work by a doctor, he testified to being once again released by Dr. RD to return to work on November 9th and a medical record of Dr. RD so stated.

Though the hearing officer's decision failed to reflect their appearance as witnesses and did not mention their testimony, both Mr. RC and Mr. JC testified. Mr. RC denied claimant's having reported a job-related injury to him on _____ and said that on _____ claimant complained of his arm hurting and that he referred claimant to Mr. JC. Mr. JC testified that on _____ claimant complained of his arm and neck hurting, saying he did not know how it happened but that he needed to see doctor. Mr. JC said he arranged for claimant to see Dr. RD.

The hearing officer found that claimant injured his neck, left shoulder and arm on _____, in the course and scope of his employment when he tripped over a pallet while carrying an 80-pound bag of concrete mix and concluded that claimant sustained a compensable injury on that date. We disagree with the carrier's assertion that such finding and conclusion find insufficient support in the evidence. Not only did the claimant so testify but the medical reports of Dr. RD, Dr. JS and Dr. GD made on August 12th, September 8th and September 26th, respectively, are all corroborative. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and the Appeals Panel has many times held that the testimony of an injured employee alone in cases of this nature may be sufficient to prove the occurrence of a compensable injury and of disability. See e.g. Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992.

With respect to disability (Section 401.011(16)), the hearing officer found that due to his injuries claimant was unable to obtain and retain employment at his pre-injury wage equivalent from "from August 22, 1994 through September 14, 1994 and September 23, 1994 through November 9, 1994" and concluded that claimant had disability "from August 12, 1994 through September 14, 1994 and September 23, 1994 through November 9, 1994." Claimant testified that he was taken off work by Dr. RD on August 12th and that he returned to work on September 15th when released by Dr. RD. That testimony is corroborated by Dr. RD's records and we are satisfied that the evidence sufficiently supports that period of disability. However, it is apparent that the date "August 22, 1994" in the finding is a typographical error and should read "August 12, 1994." Finding of Fact No. 5 is reformed accordingly.

In addition to asserting that claimant did not have any period of disability because he did not sustain a compensable injury, an assertion we find without merit, the carrier further asserts on appeal that the hearing officer erred in finding disability for the period from September 22nd to November 9th because the reason claimant did not work during that period was his termination and not his compensable injury. However, the hearing officer's discussion indicated he found evidence of disability during that period in the medical progress note for September 22nd and in Dr. RD's having released claimant to return work on November 9th. Given the references in the several doctor's reports to claimant's recurring and worsening symptoms after he returned to work on September

15th, together with the evidence that claimant's PT could not be accomplished on September 22nd and the evidence that Dr. RD again released him to return to work on November 9th, we cannot say that the hearing officer's finding of disability during the period from September 23rd through November 9th to be so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge