APPEAL NO. 952088

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On October, 4 1995, a contested case hearing (CCH) was commenced in _____, Texas, with (hearing officer) presiding as hearing officer. The hearing was concluded on November 15, 1995. In response to the issues before her the hearing officer determined that claimant had not sustained a compensable injury and, consequently, did not have disability.

Claimant timely appealed, asking us to review the hearing officer's decision, which we infer to be a request to review the record for sufficiency of the evidence and to render a decision in claimant's favor. Respondent, a self-insured employer, referred to as the self-insured, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision and order of the hearing officer are affirmed.

The facts, other than perhaps the date of injury, are not in serious dispute. Claimant was a truck driver and on April 7, 1995 (all dates are 1995), picked up a load of aluminum coil near city 1, (State 1). After the aluminum coil was loaded claimant "tied down" and "tarped" the load which required working in very "tight quarters." Claimant then proceeded to drive to city 2, (State 2), driving about 10 hours a day during daylight hours, while sleeping nights in the sleeper compartment of the cab. On or about (first alleged date of injury) or (second alleged date of injury) (the dates are somewhat fuzzy), the claimant woke from a night's sleep with what he believed was a "crick" in his neck. Initially, claimant believed the problem would work itself out, but instead, it became increasingly severe. Claimant finally called his supervisor who directed claimant to obtain treatment at a hospital emergency room (ER) near city 2. Claimant received treatment there and eventually returned to his home in (State 3) where he consulted Dr. C, his family doctor. Claimant testified that Dr. C ordered a CT Scan, diagnosed a herniated cervical disc and referred him to Dr. R, an orthopedic surgeon. Claimant had cervical spinal surgery in June and was released to return to work on July 31st by Dr. R.

The medical evidence includes a (State 2) injury report, giving an (second alleged date of injury) date of injury and description that "Pt. awoke with neck pain (day after second alleged date of injury) -last worked on 4/7/95. No obvious injury or strain. Has muscle tightness spasm." A note, dated August 14th, from Dr. C stated that claimant "had no previous history of any pain . . . to his neck and arm. It is my opinion . . . driving related duties caused his symptomology [sic]." A medical report, dated May 22nd, from Dr. R, indicated that a "laminotomy and formanotomy [sic] was performed at both levels [C5-6 and C6-7] with the finding of a small osteophyte at C5-6 and a huge herniated disc at C6-7 on the left side." Dr. C, in a brief "prescription pad" note, dated October 4th, states "Pt. said he woke up in sleeper cab with crick in neck. No history of other specific injury other

than usual duties of truck driver tying down load, etc." In response to a deposition to written questions regarding causation, Dr. C stated:

> It is my opinion the symptomology associated with the HNP was caused by work-related duties. It is my opinion that work-related duties could have been a contributing factor for the HNP.

To the same question Dr. R replied:

> He apparently can document no specific injury that immediately preceded the development of his cervical radiculitis and therefore, direct causation to a work related injury is not apparent.

Claimant throughout has maintained that he is unsure whether the rough ride in his truck or some activity tying down the load in (State 1) caused his neck problem, but regardless, it should be compensable because he was in the course and scope of employment when "it" happened, that he had not experienced previous similar problems, and that a prior preemployment physical showed no neck problems.

The hearing officer, in her discussion, commented:

> Although the Hearing Officer harbors no doubts regarding the veracity of Claimant's testimony or the sincerity of his belief regarding the causation of his injury, the unfortunate fact remains that Self-Insured has correctly cited applicable precedent to support its position that Claimant has not demonstrated that his condition does not constitute an ordinary disease of life or demonstrated the required legal causation between his employment and his injury. Therefore, although it is certainly possible that claimant's injury was caused by his employment, a decision in favor of Self-Insured is appropriate in this case.

The evidence clearly established that not even claimant knows how his injury occurred, whether it was the result of a repetitive trauma injury (rough ride of the truck) or a specific trauma associated with tying down the load.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The 1989 Act defined injury as damage or harm to the physical structure of the body and a disease naturally resulting therefrom. Section 410.011(26). Included in the definition of injury is occupational disease, which does not include an ordinary disease of life "to which the general public is exposed outside of employment." Section 401.011(34). To support a finding of an occupational disease, that is, the disease must either be indigenous to the employment or present in an

increased degree. Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991. Included in the definition of an occupational diseases is repetitive trauma injury, "occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." Section 401.011(36).

The Appeals Panel has commented that the fact that a claimant's symptoms occurred during a period of employment does not automatically mandate the conclusion that the employment was the cause of the injury. Texas Workers' Compensation Commission Appeal No. 92220, decided July 13, 1992, and Texas Workers' Compensation Commission Appeal No. 93462, decided July 23, 1993, *citing* Hernandez v. Texas Employers Insurance Association, 783 S.W.2d 250 (Tex. App.-Corpus Christi 1989, no writ). In the instant case, Dr. C makes a general conclusory comment that "work-related duties could have been a contributing factor" without any comment showing a causal connection between claimant's employment and the herniated cervical disc or a showing how the herniated cervical disc was caused by truck driving in general or claimant's work in particular. Dr. R is even clearer in stating "direct causation to a work-related injury is not apparent." Consequently, neither claimant's testimony, nor the medical evidence, establish the requisite legal causation between claimant's employment and the injury. Claimant relies entirely on the facts that the symptoms arose while he was in the course and scope of his employment and that the preemployment physical would indicate the cervical condition was not present a year earlier to conclude that his injury is compensable. As we have tried to point out, that is simply not the case, and evidence of a causal connection or that this type of injury is caused by his employment is required.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and consequently the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Elaine M. Chaney
Appeals Judge