APPEAL NO. 990422

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 19, 1999, a contested case hearing (CCH) was held. The hearing officer determined that the respondent (claimant) sustained a compensable injury, that he timely reported his injury, and that he had disability. Appellant (carrier) appeals these determinations on sufficiency grounds. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer's determination that claimant sustained a compensable neck injury is not supported by sufficient evidence. Carrier asserts that: (1) claimant was not credible and changed his story regarding the mechanism of injury; (2) claimant did not seek medical care for his _____ injury until March 1998; (3) no doctor made the connection between claimant's activities described at the CCH and his injury; and (4) claimant has failed to prove that constantly "looking up" is something other than what everyone does as an ordinary life activity. Carrier also contends that the hearing officer should not have accepted claimant's version of the events regarding how he injured his neck, and that he should have considered only the version of the events reported in the Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) and the medical records.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he or she sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The 1989 Act defines "injury" as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). The definition of "injury" includes occupational diseases. An occupational disease is defined as "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body," but does not include "an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). A claimant may meet his burden to establish an injury through his own testimony, if the hearing officer finds the testimony credible. *See* Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992.

Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

It was unclear at the CCH whether claimant was claiming a specific injury or a repetitive trauma injury. It appears that the hearing officer determined that claimant sustained a repetitive trauma injury. Claimant testified that he sustained a work-related neck injury while working as part of a roofing crew. Claimant said he injured his neck by jumping up and down from a dumpster, constantly looking far up on the roof for instructions and signals regarding the kettle he was operating, and banging on the kettle pipes to loosen asphalt that clogged the pipes. Claimant said he noticed severe pain in his neck on _____, when he was looking up on top of the roof. He said he also had back pain that has since subsided. He said that about 1:00 p.m., he told his foreman, Mr. H, that he had strained his neck. Claimant testified that the pain subsided and he continued to work, but that he began to get numbness in his hands in March 1998, so he asked to be sent to the doctor. Claimant said he saw a doctor around March 19, 1998, because he had a swollen shoulder, neck pain, and numbness in his hands. Claimant testified that he underwent surgery for a herniated disc in his neck on November 23, 1998.

In a March 9, 1998, medical report, it states that claimant complained of neck and shoulder pain and hand numbness. An April 1998 EMG report states that the findings were abnormal regarding the right upper extremity. In a May 1998 medical record, it states that claimant "experienced acute pain _____," after repeated neck extension during work as a roofer. It further stated that the pain resolved and then recurred, and that claimant had progressive upper extremity weakness. A May 1998 MRI report states that claimant has a herniated disc at the C3-4 level. In a July 1998 report, Dr. L stated that claimant had an abrupt onset of pain and that claimant related this to lifting or jumping into a dumpster. Dr. L said, "Diagnosis at this point in time would be cervical disc herniation that would [be] reasonable [sic] causally related to the type of work activities that he was doing." Claimant's earlier medical records did not mention claimant's work regarding the dumpster.

In this case, the evidence conflicted regarding whether claimant sustained a compensable injury at work. The hearing officer resolved the conflicts in the evidence and determined that claimant sustained a compensable injury. We will not substitute our judgment for the hearing officer's because his determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Regarding whether claimant was consistent in his "story" regarding how he sustained his injury, this was for the hearing officer to consider in making his findings. The hearing officer also considered the delay in seeking medical care and the medical evidence regarding causation in this case. Regarding whether claimant's "looking up" at the roof was an activity that caused an injury, the hearing officer heard the evidence regarding the mechanism of injury and determined that claimant did sustain a compensable injury. From the evidence, the hearing officer could have believed that claimant first experienced the neck pain while looking up, but that he later considered the activity or activities that caused his injury. We have reviewed the record and we perceive no reversible error.

Carrier next challenges the sufficiency of the evidence to support the hearing officer's disability determination. Carrier asserts that claimant did not have disability because he did not sustain a compensable injury. Carrier also contends that claimant did not offer any medical documentation showing that "he has been unable to work since April

of 1998." We apply the Cain standard of review to this challenge. The hearing officer determined that claimant had disability from May 28, 1998, through the date of the CCH.

The record contains a May 28, 1998, off-work slip from Dr. K which states that claimant is unable to return to work due to his _____, injury. This evidence and the claimant's testimony that he could not do his work after April 24, 1998, supports the hearing officer's disability determination. We will not substitute our judgment for the hearing officer's because his disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

Carrier next contends that the hearing officer erred in determining that claimant timely reported his injury to employer. Carrier asserts that the hearing officer's determination is against the great weight and preponderance of the evidence. Carrier contends that claimant told his supervisor only that he had neck pain and that claimant did not report that it was work related. Carrier also contends that the hearing officer did not consider all the evidence.

Generally, a claimant must report an occupational disease injury to his employer within 30 days of the date he knew or should have known that the injury was work related. Section 408.007; Section 409.001. No particular form or manner of notice is required and notice is sufficient if it reasonably apprizes the employer of the general nature of the injury and that it is claimed to be work related. DeAnda v. Home Insurance Co., 618 S.W.2d 529 (Tex. 1980). To fulfill the purpose of the notice provision, the employer need only know the general nature of the injury and the fact that it is job related. The notice may be given to the employer or any employee of the employer who holds a supervisory or management position. Section 409.001(b)(2). Where the claimant offers evidence that the supervisor was notified of the injury, but the supervisor testifies he or she was not notified, a question of fact exists for determination by the trier of facts. St. Paul Fire & Marine Insurance Co. v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 91066, decided December 4, 1991.

Claimant testified that he felt neck pain on _____, and that he told his supervisor that same day that he strained a muscle in his neck. Claimant said that he told his supervisor that it was work related and that Mr. H knew it was work related.

The hearing officer was the sole judge of the witnesses' credibility and obviously decided that claimant was credible in his testimony. We will not substitute our judgment for that of the hearing officer where the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge