

APPEAL NO. 990454

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 11, 1999, a hearing was held. He (hearing officer) determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and had disability from September 29, 1998, through February 11, 1999. Appellant (carrier) asserts that the great weight of the evidence shows that claimant's finger was not stuck by a needle, that such sharp items are placed in containers to prevent such an occurrence, that claimant had been bitten and scratched by her own cat, and that the medical evidence was insufficient to show causation. The appeals file contains no reply by the claimant.

DECISION

We affirm.

Claimant worked in a veterinary clinic. She testified that on \_\_\_\_\_, she was picking up "lab trash" and was packing everything into a disposal container, "and when I went to go and push that last bag in there . . . and something had gotten me in my finger right here." In less than an hour she said her hand was sore. She added that when she and MC were caring for a dog, she told MC that she had stuck herself because her hand was hurting, especially when she put pressure on it. She said that MC did not consider it to be of immediate concern. Claimant also said that this occurred on a Monday in the morning and the prick was felt on the small finger of her right hand at the second knuckle.

MC testified that there should have been no sharp objects in the trash on Monday, \_\_\_\_\_, because it had been emptied the day before. She also said that it was not claimant's duty to deal with sharp objects. MC did acknowledge, however, that while claimant was helping her hold a dog on that Monday morning, claimant told her she had cut herself or got stuck, saying it hurt, and felt like it was "going up [her] arm," to which MC said she replied, "keep an eye on it and clean it up." MC said that it was about 9:00 a.m. when she and claimant were working with the dog. MC also said that on September 5, 1998, she had gotten a call from claimant saying she would not be in that day because her cat had attacked her the night before. (Claimant had said that the cat attack had been "about a month before \_\_\_\_\_.")

Dr. P testified that he is a veterinarian. He said that claimant's arms were swollen from the cat attack between the time of the attack and \_\_\_\_\_, but that he could not recall having noticed any swelling on \_\_\_\_\_, when he saw claimant early in the morning as she came to work. Dr. P did not know when the cat attack had occurred.

Claimant testified that she left the veterinary clinic on or before 10:00 a.m. Monday to attend to her child, but then felt that she had to have medical care. For some reason, she returned to the veterinary clinic and Dr. B looked at the hand; after which she went to Clinic, which sent her to an emergency room (ER). She was given antibiotics and told to go

home. The next day she returned to the ER with her hand or finger "twice as big"; she was admitted and her hand was operated on that day.

Dr. S, another veterinarian, testified that there had been no problem of sharp items being disposed of improperly at this veterinary clinic.

The ER nursing assessment for \_\_\_\_\_, provided a history of claimant having been stuck by something in a biohazard box at work. The nurse noted the right hand fifth finger as deformed. Her notes also show that the right hand fifth finger was swollen with a red arc to the elbow; she said the other fingers were within normal limits. The doctor's notes of \_\_\_\_\_ indicate that claimant was treated for "needlestick right 5th digit"; Keflex was prescribed and she was told to return "if worsened." The impression was "acute needle stick right 5th digit" although the doctor noted that there was no sign of "puncture," but he also noted no "edema" although the nursing notes, during the same time period, had said the fifth finger was "observed swollen."

When claimant returned on September 29th, she had "increased swelling," (not "new swelling") and "expanding cellulitis." The impression was flexor tenosynovitis of the right hand. The surgery performed found "copious purulent material in the tendon sheath of the small finger of the right hand." There was also drainage from the wrist and hand. Gram stains were negative, but it was noted that claimant had been on antibiotics from the day before. Claimant then had carpal tunnel surgery a few days later on the same wrist. The discharge note indicated that claimant had an "acute infection" which was "secondary to a needle stick" at work. It said that contamination may have come from "serum from an animal . . . reaction to the serum."

These hospital notes do not mention claimant's wounds from the cat attack of September 4, 1998. While there are questions raised as to what the contaminant or infection may have been, there are no questions raised in any note that indicate bites and scratches from 24 days before could have incubated, allowing claimant to work during the period with only one day missed, and then manifested themselves, locally, in the small finger of the right hand on \_\_\_\_\_, just at the time that claimant was (undisputedly) telling MC at work that she had just felt a stick on the same small finger of the right hand.

Carrier says that the medical evidence is insufficient to support causation, citing Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). We believe that in this set of facts, the more appropriate case to consider is Insurance Company of North America v. Kneten, 440 S.W.2d 52 (Tex. 1969) which allowed a fact finder to consider all the evidence, including medical evidence indicating that a particular cause was possible, when there had been a "prompt onset of symptoms" and medical care quickly sought. In this case, medical notes from the claimant's hospitalization do not just report a history of a stick with a sharp object at work at the veterinary clinic, but include a consultation on October 2, 1998, which said, "the possibility of unusual organisms infecting the tissues in a patient who received a needle stick from a bag containing dead animals must be a consideration." The discharge diagnosis was "horseshoe abscess, right hand, involving the small finger and wrist." (When claimant's scratches and bite marks from the

prior cat attack were described by employees at the hearing, they were not limited to the right extremity, and no emphasis was placed on the small finger of the right hand.) The medical evidence is sufficient, with the other evidence provided at the hearing, to support the determination that the claimant sustained a compensable injury on \_\_\_\_\_. While there was evidence that sharp objects were not placed in an incorrect receptacle, that possibility could not be ruled out. As stated, and consistent with Kneten, *supra*, the claimant felt localized pain within a short time of the feeling of a stick to the finger and spoke out about that pain. While the ER doctor did not observe a puncture, the lack of an identifiable puncture site, if a puncture was not identified by the hospital staff in attendance, did not keep those doctors from noting that a needle stick occurred.

The hearing officer is the sole judge of the weight and credibility of the evidence, see Section 410.165. He could note that the medical evidence raised no concern at all about prior scratches or bites on claimant's arms and hands in treating the abscess that developed from her little finger on her right hand. He could conclude from all the evidence, that claimant did dispose of biohazard bags whether those were supposed to contain needles or other sharp objects or not. The evidence was conflicting but those conflicts were for the hearing officer to resolve. His determination, including that claimant could not return to work for several months, was not against the great weight and preponderance of the evidence.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

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Joe Sebesta  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge