

APPEAL NO. 990645

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 2, 1999. The issue at the CCH was whether the respondent (claimant) sustained a lumbar injury, in addition to a cervical injury, as a result of her accident of _____. The hearing officer determined that the claimant's compensable injury of _____, extends to and includes the claimant's lumbar spine, in addition to her cervical spine. The appellant (carrier) appeals this determination on sufficiency grounds. The claimant asserts that the Appeals Panel should affirm the decision of the hearing officer.

DECISION

Affirmed.

The carrier did not appeal the hearing officer's finding that on _____, the claimant sustained an injury while she was engaged in the exercise of her job duties with the employer. The claimant testified that on _____, while working for the employer as an office manager, she lifted office equipment to clean underneath and around it, and felt pain and soreness in her entire back. The claimant stated that she injured her neck and low back as a result of this incident. The claimant testified that the pain was concentrated in her neck and shoulder and she sought medical treatment on December 10, 1996, with Dr. H. On December 17, 1996, the claimant began treatment with Dr. D who then referred her to Dr. L. The claimant was also examined by Dr. HA and Dr. T prior to Dr. L performing an anterior cervical discectomy and fusion at C6-7 with a bone graft from her left hip on March 14, 1997. The claimant testified that, although her low back continued to bother her after the cervical surgery, she believed it might be due to age or the fact that her left hip had been used as a donor site for the bone graft. The claimant stated that she made only casual mention of the discomfort in her low back to the doctors and that is the reason it is not mentioned in the medical records. The claimant testified that she mentioned the pain in her left hip and problems with her left leg to Dr. L at every visit after the cervical surgery, but was told that it would take time for the donor site to heal. The claimant testified that she did not become concerned about her hip and low back pain until October 1998, when she mentioned it to Dr. L and he indicated that the bone graft site should be healed. The claimant stated that once she became concerned about her low back, it was noted by Dr. L in his medical records beginning October 1998.

The claimant's husband testified that the claimant had complaints of continued low back pain since the date of injury, _____. In evidence are the statements of the claimant's coworkers, friends, and relatives who indicate that the claimant complained of low back pain as well as neck pain since the date of injury.

Mr. L, the insurance adjuster for the claimant's claim, testified that he spoke with the claimant approximately six times during the course of the claim and he did not remember the claimant ever mentioning low back pain, nor did he receive any medical records

indicating low back complaints until October 1998. Mr. L did recall the claimant complaining about pain at the site of the bone graft.

The first medical record that notes lumbar pain is the medical record of Dr. L dated October 5, 1998. On December 9, 1998, after receiving a letter from the claimant explaining the onset and continuation of her low back complaints, Dr. L indicated that the claimant's low back problems "were there from the beginning and should be considered and covered." The carrier contends that the hearing officer's decision is not supported by sufficient evidence and that it is against the great weight and preponderance of the evidence because the alleged lumbar spine injury was too remote in time to establish causation. The hearing officer considered the passage of time between the claimant's injury date and her first recorded complaint of low back pain and resolved that the claimant was a credible witness and she sustained a lumbar injury on _____. The carrier asserts that Dr. L's opinions regarding the causal relationship between the original injury and the claimant's lumbar spine pathology fail to rise to the standard of expert medical evidence required by Texas Workers' Compensation Commission Appeal No. 962569, decided February 5, 1997, and Texas Workers' Compensation Commission Appeal No. 960582, decided May 2, 1996. We note that both of the cases cited by carrier involved occupational diseases, chemical exposure, and chemical sensitivity. Both cases involved a matter of causation which was not in an area of common expertise and we stated that the necessary causal connection between the particular disease and the workplace must be established by expert medical evidence to a reasonable medical probability. We have previously stated that where the subject of an injury is not so scientific or technical in nature as to require expert evidence, lay testimony and circumstantial evidence may suffice to establish causation. Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992. In this case, expert testimony is not required as we do not consider the question of causation to be beyond common knowledge.

The claimant had the burden to prove the extent of her compensable injury. The 1989 Act defines injury, in pertinent part, as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." It has been held that the immediate effects of an injury are not solely determinative of the nature and extent of that injury and that the "full consequences of the original injury . . . upon the general health and body of the workman are to be considered." Texas Employers' Insurance Association v. Thorn, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ), quoted in Texas Workers' Compensation Commission Appeal No. 94232, decided April 11, 1994. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). The claimant's testimony raised a fact issue and the hearing officer was entitled to and did believe claimant's testimony over the other evidence. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Regarding causal link, the trier of fact may find a causal link between the injury and employment from the claimant's testimony alone. Texas Workers' Compensation Commission Appeal No. 951246, decided September 11, 1995. When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175,

176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We find there was sufficient evidence to support the hearing officer's determination that claimant sustained a compensable: lumbar injury, in addition to the compensable cervical injury, on _____.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Elaine M. Chaney
Appeals Judge