

APPEAL NO. 990669

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 5, 1999, a contested case hearing (CCH) was held. The record was closed on March 1, 1999. The issues concerned whether the appellant, who is the claimant, sustained an injury in the course and scope of employment on _____, and whether he had disability from his injury.

The hearing officer found that the claimant sustained a ruptured eardrum on _____, but that other problems he had in conjunction with a colloidal cyst were not work-related. The hearing officer found that the claimant had not experienced disability (the inability to obtain and retain employment equivalent to his pre-injury average weekly wage) due to the compensable injury.

The claimant appeals, pointing out he was put into a no-work status by his treating doctor for his eardrum injury. The claimant also argues that it was error to not find that the cyst on the claimant's brain was not related to his ruptured eardrum. The carrier responds that the decision is supported by the record. The carrier points out that evidence it believes is in favor of the decision, and further points out the lack of evidence to support the claimant's contention that a brain injury resulted from his work. There is no appeal of the finding that the claimant had an eardrum injury on the date in question.

DECISION

Affirmed.

The claimant was performing sandblasting work, wearing a blasting hood, on _____, while employed by (All dates are 1998 unless otherwise indicated.) Although there was general testimony that work sites could be noisy, there was not much evidence developed as to the source or nature of noise that day. The claimant said he was not wearing ear plugs. He said he suddenly felt pain in his ear. He testified that within three days he also had left eye visual disturbances and headaches.

The claimant continued to work and finally saw a doctor on April 28 when his problem did not clear up. The claimant was referred to Dr. E, who examined him on May 7 and found a perforated eardrum. He noted that the claimant complained of migraine headaches as well. He told the claimant that his problem would spontaneously resolve in six weeks. The claimant complained during his testimony that Dr. E always sent him back to work and did not take his complaints seriously.

The claimant saw other doctors; he was examined by Dr. B as part of a required medical examination. Dr. B reported on August 28 that the claimant's headaches could have resulted from his burst eardrum. Dr. B recommended further evaluation by an ophthalmologist and perhaps a CT scan of his head. The claimant said that it was the

ophthalmologist who took him seriously and sent him for further testing, which revealed a colloidal cyst in the claimant's brain, for which he had surgery on November 2.

The only medical evidence in the record which comments on the relationship between the cyst and the burst eardrum affirms that there is no relationship. Dr. M, a neurologist to whom the claimant was referred by the ophthalmologist, expressly opined before his surgery that the two were not related.

Although the claimant said he "felt like" all his problems resulted from his eardrum, there was essentially no medical evidence to support this theory. The claimant said that he attributed his vision and headache problems to the eardrum rupture because this is when those problems started, and no one had proven to him that they were not related. The claimant said that he had been told by his doctors that the brain was so complicated that they could not be sure what the cause of the cyst was. The claimant's attorney, in response to the hearing officer, stated he could not identify the reason why the colloidal cyst was related to the burst eardrum, and the record was held open to obtain the surgical report, which is in evidence. The report does not draw a connection to the ear drum injury.

The claimant said that he worked until he was laid off sometime in May. He was unable to say for certain if he was precluded from working around noise, but said that he was assigned to work around noise. He said that he did not know whether his eardrum problem would currently keep him from working because he had not been back to work. The claimant felt, however, that he could not work, and, pressed for why not, he identified his surgery, headaches, and vision problems as the primary reasons. He had not worked or looked for work since he was laid off. The claimant said his ear still bothered him, depending upon the weather.

We agree that, in this case, medical evidence was required to draw any causal connection between the claimant's work and his colloidal cyst, which would be well beyond common knowledge or experience. The only medical evidence commenting on a relationship stated that there was none. The fact that a condition is diagnosed around the time that there is also a work related injury does not establish the necessary link to the course and scope of employment that must be made to confer compensability. We cannot agree that the hearing officer erred by limiting the injury to the perforated eardrum.

The definition of "disability" which is necessary to entitlement to temporary income benefits is in Section 401.011(16):

"Disability" means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.

The claimant was able to work for a good portion of the six-week healing period that Dr. E projected in his initial report. The claimant's own testimony attributed most of the inability to work to conditions other than the ear drum. While there was some evidence from Dr. B that the claimant had headaches due to his perforated eardrum, the hearing

officer could consider that this opinion was prior to diagnosis of the colloidal cyst, and he could therefore assign less weight to Dr. B's connection of headaches to the eardrum.

We affirm the hearing officer's decision and order as sufficiently supported by the record.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge