

APPEAL NO. 990942

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 April 4, 1999. He (hearing officer) determined that the respondent's (claimant) compensable injury of _____, included the neck/cervical area, but not the left shoulder, and that the claimant had disability. The appellant (self-insured) appeals these determinations, contending that they are against the great weight and preponderance of the evidence. The appeals file contains no response from the claimant. The determinations that the _____, compensable injury did not include the left shoulder and that the self-insured disputed the claimed injuries have not been appealed and have become final. Section 410.169.

DECISION

Affirmed as reformed.

The claimant worked as a groundskeeper. In 1994, while working for the self-insured he sustained a compensable injury when he fell from a tree while pulling on a limb. Although not the subject of the proceedings below, medical records in evidence reflect a left shoulder injury while the claimant testified to some resulting neck pain. He sustained the compensable injury which is the subject of these proceedings on _____, while pulling on a starter rope for a lawn edger. The parties agreed that the claimant injured his right shoulder in this later incident. The dispute centers on whether he also injured his neck/cervical area. The claimant testified that he felt pain in his neck area after pulling the starter rope and that, while some problems from the first injury still existed, they had largely resolved by the time of the second incident. An MRI on June 24, 1998, disclosed cervical herniation. In letters of July 22, 1998, Dr. O, a treating doctor, attributed the cervical condition to the tree incident in 1994. The claimant and his wife testified that they had no idea how Dr. O arrived at that conclusion and said that the claimant described to Dr. O the _____, incident.

The claimant had the burden of proving that he injured his neck/cervical area as claimed on _____, and that he had disability. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). These issues presented questions of fact for the hearing officer to decide and could be proved by the testimony of the claimant alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer found the claimant credible. The self-insured in its appeal points to Dr. O's letters which refer to the 1994 injury as the cause of the claimant's neck injury and other reports filed on the claimant's behalf which described the circumstances of the injury to be a slip and fall. The claimant's attorney pointed out that the claimant has a "communication handicap" and the hearing officer could well conclude that the information in Dr. O's report was the product of a problem in communication or a mistake on Dr. O's part and that his and other reports may not have reflected the understanding of the claimant. The self-insured appears to

concede, and the evidence supports the conclusion, that the 1994 injury did not involve the cervical spine. In any case, we believe the claimant's testimony was sufficient to support the finding of a compensable neck/cervical area injury on _____. Under our standard of review, we affirm that determination. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The self-insured appeals the finding of disability on the basis that the compensable injury did not include the cervical spine and because the stipulated right shoulder injury did not cause the disability. The claimant testified that he could not work because of his compensable injury from _____, after he was released from the hospital for treatment of an unrelated condition (rectal cyst). This testimony, together with our affirmance of the finding of a compensable neck/cervical injury, was sufficient to support the finding of disability. We note, however, that in Finding of Fact No. 4, disability is found beginning May 18, 1998, through the date of the CCH. This is consistent with the claimant's testimony. Conclusion of Law No. 4 and the DECISION portion of the decision and order find disability beginning on May 15, 1998. We consider the reference to May 15, 1998, to be in the nature of a typographical error. For this reason we reform the decision and order to reflect that disability began on May 18, 1998, and continued through the date of the CCH.

For the foregoing reasons, we affirm the decision and order of the hearing officer as reformed.

Alan C. Ernst
Appeals Judge

CONCUR:

Dorian E. Ramirez
Appeals Judge

CONCUR IN THE RESULT:

Tommy W. Lueders
Appeals Judge