

APPEAL NO. 990960

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 13, 1999. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury on or about _____, and whether he sustained disability. The hearing officer found that the claimant sustained a compensable injury on _____, and that he had disability from January 28, 1999, continuing to the date of the hearing. The appellant (carrier) appeals, urging that the determinations of the hearing officer on both issues are against the great weight and preponderance of the evidence and arguing that it has not been proven that the injury resulted from the employment. The claimant responds that there is sufficient evidence to support the decision of the hearing officer and asks that it be affirmed.

DECISION

Affirmed.

The Decision and Order of the hearing officer sets forth adequately and fairly the pertinent evidence in the case and it will only be briefly summarized here. The claimant, a truck driver, testified that on _____, he was driving a large tank truck, which had very poor suspension and was very rough riding, when he hit a huge pothole that severely jarred him. Other evidence was introduced which corroborated the extremely poor and dangerous condition of the area of the road in question. In any event, the claimant did not feel any pain in his neck at the time but he did the next morning. The pain became so severe that by the weekend, the claimant was crying from the pain. He went to a doctor, was subsequently diagnosed with a large herniation in the cervical area, was recommended for an urgent operation and underwent a cervical fusion surgery. Claimant testified that he did not have any neck or back problems or injuries prior to _____, and that he did not engage in any physical activity after _____, that would cause the injury he sustained. He attributed the injury to the severe jolt on _____. One of the doctor's reports states the "nature of claimant's injury is certainly consistent with the possibility of delayed onset of symptoms for spine injuries, that it is very common for the traumatic event to take place on a certain day and for symptoms to develop later on or shortly thereafter." There was significant corroboration for claimant's testimony about his limited activity following the incident and his lack of any prior injury. Also introduced was a letter in a newspaper describing the damage caused to a trailer by the rough road in the area claimant sustained the severe jolt.

The carrier introduced evidence that the claimant had helped a friend move the weekend before the incident and that he had carried heavy items. However, there was no indication that the claimant sustained any injury to himself from this activity, as stated by the claimant and the friend he was helping. The carrier also introduced some evidence that the claimant was unhappy about not being allowed to work, allegedly because of too much overtime and that he had stated he was going to, more or less, get even. At the time of the

hearing the claimant was still recovering from his surgery and had not been released to work.

Carrier urges that the determinations of the hearing officer are against the great weight and preponderance of the evidence and that the claimant has not proven the injury was caused by an event in the course and scope of employment. We do not find merit to this assertion of error and conclude there is sufficient evidence to support the findings, conclusions, and decision of the hearing officer. It is clear that the hearing officer found the claimant to be a credible witness and accepted his testimony concerning the incident, his lack of any prior injury, his limited activity following the incident, and the appearance of significant symptoms the days immediately following the incident. He also could consider the severity of the injury, the medical opinion that a delayed onset of symptoms was not uncommon under the circumstance of the injury in issue, and the attestation as to the claimant's good reputation for truth and veracity. While the carrier introduced a suggestion that the claimant might have indicated a retaliatory motive to an acquaintance, this only presented an issue of fact for the hearing officer to resolve. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Our review of the evidence certainly does not lead us to conclude that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or 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). Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge