APPEAL NO. 991105

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq*. (1989 Act). On April 29, 1999, a hearing was held. She (hearing officer) determined that the respondent (claimant) sustained a compensable injury on _____, that claimant notified his supervisors, Mr. B and Mr. H, on the same day (_____), and that appellant (carrier) did not waive the right to contest compensability. Carrier asserts that claimant did not sustain a compensable injury, citing the absence of chiropractic records from his initial treatment, the absence of treatment for seven months, and claimant's testimony of injury to various parts of the body whereas only his neck is mentioned on the Employer's First Report of Injury or Illness (TWCC-1); carrier also asserts that notice to supervisors at (employer) did not constitute notice to (stipulated employer) within 30 days, adding that stipulated employer received no notice of injury until May 1998, and further adding that representatives of employer provided evidence that is "false and absurd" and "not believable," and concluding that claimant and his supervisors have "credibility problems." The appeals file does not include any appeal as to the finding that the carrier's dispute was sufficient and also includes no reply by claimant to carrier's appeal.

DECISION

We affirm.

Claimant was hired by employer about three or four years ago. Stipulated employer provided a notarized statement by its personnel representative, (SS), dated February 8, 1999, which said, among other things:

> (STIPULATED EMPLOYER) . . . provides human resources, payroll, and payroll tax services for its clients such as [employer].
>
> (STIPULATED EMPLOYER) and its clients function as co-employers, however (STIPULATED EMPLOYER) is the employer of record.
>
> [Claimant] was hired directly by [employer].
>
> All employees who are injured on-the-job are to report their injuries directly to the client. [Emphasis added.]

Claimant testified without an interpreter, although one was present to assist as necessary. He testified that he was hired by Mr. B of employer. He did not indicate that he had ever been "assigned" to work at any place other than employer by stipulated employer. When carrier provided a Payment of Compensation or Notice of Refused/ Disputed Claim (TWCC-21) disputing the injury, it showed that the "employer" was employer, but gave stipulated employer's address.

Carrier's counsel argued that a personnel manager for stipulated employer does not determine questions of law such as whether two employers are "co-employers." He did not argue that an employer (in this case stipulated employer) could not (or did not) have the right to control to whom an employee should provide notice; more specifically, he did not argue that stipulated employer could not provide that a claimant should notify employer when an injury occurred. In addition, the fact finder could note that the carrier did not provide any evidence that the statement of SS was inaccurate or outside her authority to provide in regard to any matter, whether factual or legal.

While the facts of this case do not indicate that the notice issue turned on whether co-employers existed, since stipulated employer stated that claimant was "to report [his injury] directly to client," Texas Workers' Compensation Commission Appeal No. 962340, decided January 2, 1997, has recognized that there may be co-employers. We also observe that while there was a stipulation that claimant was the employee of stipulated employer, there was no stipulation that there was no other employer or that stipulated employer was the sole employer.

Claimant testified that on _____, he fell off a stack of pipes, falling about five feet to the ground. He said he landed on his left side striking a two-by-four lying on the ground; he said he also struck his head on the ground, which was made up of gravel. A statement of an investigative reporter indicates that on December 10, 1998, the investigator made an appointment with employer, not stipulated employer, to see (DC) at employer's address. The investigator wrote that DC said claimant slipped on a pipe on the ground, which was concrete, and fell onto his left side. DC then asked claimant if he was alright, and claimant showed him "a strawberry that was on his left side of his chest and advised him that it hurt." This investigator wrote that DC did not say he saw claimant "hit his had" (apparently head) when he fell.

Claimant testified that the accident happened in the morning, that he kept working, and then told Mr. B and Mr. H at the end of the same day. Both Mr. H and Mr. B provided statements saying that claimant reported the injury the same day, _____. (The statements were exactly the same except for the signature.) Both also said that "paperwork" was sent to stipulated employer the "day of the injury."

Claimant stated that he was told to see Dr. C, D.C., at (Chiropractic). Claimant said he made two visits and then did not go back for two weeks. Two weeks after his last visit, he tried to go back to Dr. C but she had moved or gone out of business. Claimant's testimony about an extended period of no medical care from apparently late September or early October 1997 to May 1998 was difficult to follow. He indicated that he asked employer about "seeing another doctor" and that employer told him to go, but he said he did not know where to go. Finally, claimant said in May 1998, because he "could not stand it anymore," he resumed medical care.

Claimant testified that his injury was to his head, neck, chest, back (claimant had a prior low back injury and said this back injury was higher than that injury), and left shoulder.

There were no chiropractic records from Dr. C. Carrier indicated that with no initial chiropractic records there was no showing of any medical care in 1997. (A copy of a check from employer to Dr. C dated _____, for $280.00 was provided in evidence.) Since May 1998, claimant received some medical care from Dr. G and chiropractic care, but the chiropractic records in evidence do not indicate improvement and provide little specific information.

While carrier states that claimant did not provide chiropractic records of his initial visit and did not seek care for an extended period of time, claimant testified he sought chiropractic care immediately; the check from employer to Dr. C provides some evidence that could be reasonably interpreted as corroborating that testimony. In addition, while an absence of medical care for an extended period of time may raise valid questions about an injury (*see* Texas Workers' Compensation Commission Appeal No. 92543, decided November 23, 1992), claimant testified, and the hearing officer concluded that he was credible, that he continued to inquire about who to see after Dr. C ceased practicing. Texas Workers' Compensation Commission Appeal No. 93694, decided September 23, 1993, also said that the content of a written notice of injury does not control the extent of injury sustained, which is a question for the hearing officer as fact finder to decide.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. In addition to her assessment that claimant was credible, she also considered the statement of DC who witnessed at least part of claimant's fall and observed a bruise which claimant showed him. She also considered the statements of Mr. H and Mr. B, both of whom said that claimant reported the injury the day it occurred. The evidence was sufficient to support the determination that claimant sustained a compensable injury on _____, to his head (including the area behind the left eye), neck, left shoulder, chest, and "upper back-thoracic area."

The statements of Mr. B and Mr. H (supervisors of claimant for employer) that claimant notified them the same day, together with stipulated employer's assertion that an employee who is injured on the job is to report his injury to employer, together with stipulated employer's assertion that it and employer are "co-employers," in addition to the testimony of claimant, provide sufficient support for the determination that notice was timely provided to stipulated employer.

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).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge