

APPEAL NO. 991195

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 May 11, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury and whether the claimant had disability. The hearing officer determined that the claimant did not sustain a compensable injury and did not have disability. The claimant appeals, urging that the hearing officer's determinations amount to an abuse of discretion and that the hearing officer applied an incorrect standard in reaching her decision. The respondent (carrier) responds that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

DECISION

Reversed and remanded.

The claimant testified that on \_\_\_\_\_, while working as a load operator, he hit a pile of dirt and rock, causing him to be thrown forward. The claimant testified that he initially felt dizzy and nauseous, but within minutes was suffering from back pain. The claimant testified that at the time of the injury, he was not sure what was wrong with him and thought it might be the flu. Immediately following the incident, the claimant told his supervisor, Mr. J, that he felt sick and Mr. J took him to see Dr. C. A letter written by Dr. C on March 5, 1999, indicates that on \_\_\_\_\_, the claimant had complaints of dizziness, headache, and weakness that had been present for two days and complaints of back pain which increased at night; that Dr. C asked the claimant whether his pain was a result of an injury at work and the claimant said it was not work-related; that on January 28, 1999, the claimant returned to see Dr. C and stated that he thought he had hurt his back while driving a front-end loader at work and he attributed it to repetitive ground contact with the front bucket; and that the claimant stated to Dr. C that he was in so much pain on \_\_\_\_\_, that he did not understand what she was asking him when she asked if his pain was work-related.

The carrier submitted the recorded statement of Mr. J to support its position that the claimant did not sustain an injury at work on \_\_\_\_\_. According to Mr. J, the claimant approached him on \_\_\_\_\_; said he was dizzy and sick to his stomach; and asked to be taken to the doctor. Mr. J stated that he did not know the claimant was alleging he had hurt himself at work until January 28, 1999, after the claimant returned from his doctor's appointment. There was no disputed issue concerning the timeliness of claimant's notice of injury to the employer. The carrier asserted that, based on the medical records, the claimant was suffering from back pain that preexisted \_\_\_\_\_.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing

officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The claimant had the burden to prove that he sustained a compensable back injury on \_\_\_\_\_, and had disability. 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. While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993.

What concerns us in this case is the following statement made by the hearing officer in her Statement of the Evidence:

The medical evidence is sufficient to show, by a preponderance that Claimant sustained an injury to the low back, however, it does not show, by a preponderance of the evidence that the claimed incident on \_\_\_\_\_, was the cause of that injury, nor does it show that the injury occurred in the course and scope of Claimant's employment.

This statement leads us to believe that the hearing officer is requiring expert medical evidence to establish causation, which is a higher standard of proof than is required. We reverse and remand for the hearing officer to reconsider the existing record and apply the correct standard of proof consistent with this decision. Since the issue of compensability has not been resolved, we must reverse and remand the issue of disability for the appropriate conclusion of law, based upon whether the hearing officer determines that the claimant sustained a compensable injury. In reversing, we do not imply that a hearing officer may not consider medical evidence in "common knowledge" cases, and such evidence may be material in deciding the ultimate issue, but medical evidence is not required.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Dorian E. Ramirez  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge