

APPEAL NO. 991644

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 30, 1999, a hearing was held. She (hearing officer) determined that appellant (claimant) did not sustain an occupational disease; that the date of injury was _____; that claimant's notice to his employer on November 2, 1998, was not timely; that claimant timely filed his claim; and that there is no disability. Claimant asserts that the decision is against the great weight of the evidence, stressing that November 2, 1998, was the first he knew that he had sustained a work injury and that his doctor "told him" of the work-related nature of the disease on November 2, 1998. Disability is also appealed. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer). He testified that during the last several years of his 29-year employment with employer, he had worked in the janitorial and maintenance area. Just as the hearing officer's Statement of Evidence reflects, the record states that claimant's duties included mopping, sweeping, and moving furniture. (His claim shows that the basis of injury was walking and standing, but claimant testified that in addition to walking and standing, he lifted items that he had to move from time to time.) There was no more specificity provided about the repetitious nature of the work, and there was no other evidence that the work did not include a variety of different tasks, but claimant did say that in the last months his work had become "excessive" due to personnel limitations.

Claimant said that his back, hip, and foot problems are caused by repetitive work and on November 2, 1998, Dr. G put him on restricted work and prescribed therapy for him. However, there is no medical report dated November 2, 1998, in the record. Claimant did submit a medical report from Dr. G dated November 20, 1998, which says that claimant "maintains" that his hip and foot pain are "caused by the work that he was doing"; the diagnosis was bursitis of both hips and metatarsalgia of the right foot. Possibly the most striking pronouncement on this report is the entry, "date of accident was around November or December of 1997" while the most striking absence was the lack of any indication that Dr. G said anything about the work-related nature of any injury.

Claimant's exhibits also include two letters of reply to claimant's lawyer, both dated February 3, 1999, from Dr. G and from Dr. P, and both provided an identical paragraph, as follows:

My opinion is that the metatarsalgia of this patient's right foot is from the work related injury of subsequent injury. I think that the bursitis of both hips are [sic] work related injuries of subsequent injury also, and my opinion is that the back sprain is a result of the work related injury of subsequent injury also.

The carrier provided medical records from Dr. G dated in 1994 and 1995 showing that claimant had sacroiliac pain, right leg pain, and pain in both hips, with both x-ray and MRI showing mild degenerative changes in both hips. In addition, a copy of a statement from claimant, undated, states that in November-December 1997 claimant had right foot pain, back pain, and right hip pain "by the end of the day," which caused him to limp. The statement said that the pain got worse in "following months." (Claimant's testimony appeared to place the "getting worse" time to February-March 1998, when he said he limped.) His statement then said that he "talked to Nancy the company nurse of what was happening" at that time. His statement also states that his work requires standing and walking which "is causing this condition." Finally, carrier provided a form in which claimant reported his injury on November 2, 1998; it says that the "accident or diagnosis" date was "Nov/Dec 1997" and listed his right foot, legs, low back, and hips.

Neither the testimony nor argument of claimant at the hearing even mentioned the discussion with the company nurse (possibly in February or March, 1998) as the date claimant gave notice of his alleged injury; the appeal also does not assert any date, other than November 2, 1998, as the date of notice to employer.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. Her Statement of Evidence provides a clear explanation of her interpretation of the evidence. She noted claimant's testimony relating his problems with his back and hips to November/December 1997 and also noted that Dr. G listed the date of injury as in November or December 1997. She considered Dr. G's letter of February 3, 1999, to be "cursory" and said that it did not show a causal connection to the work, pointing out that it did not show what activities were involved or how those activities caused the condition. She also considered that the medical reports indicate that claimant's condition is an ordinary disease of life. She concluded that claimant did not sustain an occupational disease but knew that it "might" (the 1989 Act at Section 408.007 uses the word, "may") be related to his work in November or December 1997; she therefore chose _____, the last date within that time frame, as the date of injury.

The hearing officer's findings of fact show that after the "date of injury," claimant trivialized his condition until February or March 1998 when the condition worsened. (As stated, claimant's statement gave no set date that he talked to the company nurse and did not say what he told her; in addition, claimant has never stated that notice was provided at that time.) The hearing officer concluded that claimant's notice in November 1998 was not timely.

The claimant's medical records prior to 1998, the lack of specificity as to what the repetitious work was and how it caused degeneration of the hips and a foot and back problem, a portion of claimant's evidence indicating that the repetitious work he did which he thought caused the condition was simply walking and standing, along with the medical opinion (letter) that "work" caused the condition when the medical records themselves do not even infer that any doctor had made that connection, sufficiently support the determination that claimant did not sustain a compensable injury.

Claimant's own documents plus the medical record of Dr. G sufficiently support the determination that the date of injury was _____.

With an affirmed finding of no compensable injury, there can be no disability. See Section 401.011(16).

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:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge