APPEAL NO. 000257

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 January 5, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury to his right shoulder on _____; and that the claimant had disability from May 25, 1999, to the date of the hearing. The appellant (carrier) appealed these determinations, contending that they are against the great weight and preponderance of the evidence. The appeals file contains no response from the claimant.

DECISION

Affirmed.

We initially note that the compensability issue was framed in terms of whether the claimant sustained an injury to the right shoulder in addition to the right hand. At the CCH, and also reflected in the report of the benefit review conference the claimant stated that he was not claiming a right hand injury, but only a right shoulder injury. For this reason, we construe the hearing officer's finding that the claimant sustained a right shoulder injury on _____, as also finding that the claimant's compensable injury did not include his right hand.

The claimant worked as a welder. He testified that on _____, he was picking up a piece of angle iron when he felt his right shoulder, in his words, become "dislocated." He said he reported this immediately to Mr. W, his supervisor, who, according to the claimant, told him he did not then have the paperwork to fill out; that he had to go to the employer's clinic but could not do that until the report was filled out. The claimant also said he did not know where the clinic was. On (date), he completed an incident report for the employer on which no date or time of injury was listed. He also said the injury was to his hand. The claimant, who has limited English language capability, testified that he had help from someone who spoke English and Spanish in filling out the form. He said he listed the hand as the body part injury because he did not know the word for shoulder and did not ask the person helping him for assistance in finding the correct English word for shoulder. The claimant continued working after the injury until May 24, 1999, when he saw Dr. H, D.C., who diagnosed shoulder sprain/strain and immediately placed the claimant in an off-work status. Dr. H listed the date of injury as _____, and reported a history of the claimant "lifting sheet metal." From _____, until (date), the claimant's payroll records in evidence showed he regularly worked overtime, including as much as 21 hours in one week. The claimant said he worked in pain. Dr. H reissued an off-work slip on June 7, 1999, for "2 weeks time."

The next medical evidence was an Initial Medical Report (TWCC-61) of Dr. L, D.C., of a visit on September 14, 1999. Dr. L listed the date of injury as _____, and reported the history of an injury on this date as provided by the claimant. He too excused

the claimant from work.[1] Written witness statements were also admitted into evidence, including that of Mr. B, a coworker, who wrote that he was a witness to the claimant's report to Mr. W and Mr. W's alleged response that he did not have the paperwork to send the claimant to a doctor, and that of Mr. F, a coworker, who said he was a witness to the incident and the claimant's attempt to obtain medical help from Mr. W. Mr. F also stated that around May 18, 1999, the claimant again told Mr. W he needed to see a doctor, but no action was taken until the claimant went to a doctor on his own.

The claimant had the burden of proving that he sustained a compensable injury as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided June 21, 1993. In his discussion of the evidence, the hearing officer noted the "discrepancies" between the date of injury claimed and the date contained in Dr. H's report, but nonetheless found the claimant and Mr. B credible in their assertions of an injury while lifting the angle iron. In its appeal of this determination, the carrier contends that because of the long delay between the claimed date of injury and the first medical attention some three months later, while the claimant continued to work, the claimant was required to prove causation by expert medical evidence; that the claimant failed to provide objective evidence of an injury; and that the claimant and Mr. B lacked credibility.

Generally, expert evidence is required in cases where matters of causation are not within ordinary experience. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Typically, a person who experiences pain while using a body part may establish causation by his or her own testimony. However, a hearing officer may in all cases weigh that testimony against the presence or absence of expert medical evidence in deciding whether the testimony is credible or not. In addition, we have also noted that where there is a lengthy delay between the incident allegedly causing the injury and the onset of pain in a particular body part, a hearing officer may require expert evidence to establish causation. Texas Workers' Compensation Commission Appeal No. 92617, decided January 14, 1993. In the case we now consider, the claimant, who was generally considered credible by the hearing officer, testified to a specific incident and the onset of pain. He further said that the pain continued and he worked with the pain despite requests of the employer to see a doctor. Thus, this situation is different from one where the pain arises much later. Under these circumstances, we are unwilling to conclude that expert medical evidence was required to prove causation.

The carrier also argues that the claimant only proved subjective pain and did not present objective medical evidence of an injury, defined as "damage or harm to the physical structure of the body." Section 401.011(26). Dr. H's diagnosis of a strain/sprain,

[1]Interestingly, the first off-work slip is dated June 3, 1999, some three months before the initial medical report.

based on his clinical examination of the claimant, may be considered objective evidence. In any case, we have said that there was no requirement under the 1989 Act that an injury be proved with objective medical evidence. *See* Texas Workers' Compensation Commission Appeal No. 92300, decided August 13, 1992; Texas Workers' Compensation Commission Appeal No. 92030, decided March 12, 1992; Texas Workers' Compensation Commission Appeal No. 93812, decided October 22, 1993.

With regard to the carrier's challenge of the claimant's and Mr. B's credibility, we stress that the hearing officer was the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the carrier correctly pointed out, Mr. B did not say he witnessed the incident, only that he witnessed the reporting of it. We are confident that the hearing officer recognized this distinction. Nonetheless, Mr. B's statement could be considered corroborative of the claimant's testimony. The different date of injury on Dr. H's medical report raises obvious questions about the credibility of this and other evidence. The hearing officer could have inferred that the April date in Dr. H's report reflected only the date of the report to the employer, not the date of injury the claimant said he gave Dr. H. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and 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). Applying this standard of review to the record of this case, we find the evidence sufficient to support the determination that the claimant sustained a compensable right shoulder injury on _____, and decline to reverse that determination.

The carrier appeals the disability determination on the basis that there was no compensable injury. Having affirmed the finding of a compensable injury, we also affirm the finding of disability.

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

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Susan M. Kelley
Appeals Judge