APPEAL NO. 000438

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 27, 2000. The issues at the CCH were whether the respondent=s (claimant) compensable injury of _____, was a producing cause of his cervical spine problems, and whether the appellant (carrier) waived its right to contest compensability of the claimant=s cervical spine problems by not contesting compensability within 60 days of notification. The hearing officer determined that the claimant=s compensable injury of _____, was a producing cause of his cervical spine problems, and that the carrier did not waive the right to contest compensability of the claimant=s cervical spine problems. The carrier appeals, urging that the hearing officer erred in determining that the claimant=s compensable injury of _____, was a producing cause of his cervical spine problems. The claimant replies that the hearing officer=s decision is supported by sufficient evidence and should be affirmed. The hearing officer=s decision on the waiver issue has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant testified that on _____, he was driving his employer=s truck, the brakes failed, and he hit a tree. According to the claimant, he hit his head on the windshield strongly enough to bulge the glass, and the windshield was cracked. The claimant was treated at the scene by emergency medical services (EMS). The EMS records indicate that the claimant had an abrasion on his forehead and pain in his chest, right knee, right leg, head, ribs, and the cervical, thoracic, and lumbar regions of his spine. EMS immobilized the claimant=s neck with a cervical collar and a backboard and transported him by ambulance to the hospital. The claimant was treated and released from the hospital on _____. Diagnostic testing indicates that the claimant sustained fractured ribs, a thoracic compression fracture at T12, herniated discs at L3-5, and a medial condyle fracture in his right knee. The parties stipulated that the claimant sustained compensable injuries in the form of a laceration to the head, fractured ribs, an injury to the right knee, thoracic compression fracture, and lumbar herniations.

The claimant testified that he sustained an injury to his neck on _____, and that he told all of his doctors who treated him that he was having neck pain. The claimant received medical treatment from Dr. DL, Dr. P, Dr. K, Dr. DE, and Dr. S. The first medical record which indicates a neck complaint, other than the EMS records, is Dr. K=s letter to Dr. P dated September 10, 1998, which states that the claimant had increased pain and now has pain that radiates all the way up to the cervical region. On December 15, 1998, Dr. S examined the claimant for the first time and recommended a cervical MRI. Dr.

S notes that the claimant had persistent continued distress of the neck and back, and that no doctor had worked up his cervical spine problem.

The parties agreed to have the claimant examined by Dr. D to determine whether the claimant=s neck injury was a result of the _____, accident. On April 7, 1999, Dr. D issued a report which states, I believe that the [claimant=s] current cervical complaints are the result of the injury on _____. The history of the accident is consistent with the cervical history. Dr. D recommended a cervical MRI and noted that the claimant=s son-in-law interfered with the examination, asking questions and causing tension on the part of the claimant. On May 13, 1999, a cervical MRI was performed which indicated central disc bulging and spondylosis at C5-6.

The claimant testified that the benefit review officer sent him to Dr. R. Dr. R examined the claimant on June 18, 1999, and opined that there is no objective evidence to suggest that [the claimant=s] cervical spine problems are the result of the _____ accident. Dr. R=s report indicates that he was only provided with a single document, the cervical MRI. The claimant and his daughter, Ms. L, testified that they offered Dr. R copies of the claimant=s medical records, but Dr. R refused them, stating that he had copies of the claimant=s medical records. The claimant was scheduled for lumbar surgery on June 30, 1999, but it was rescheduled due to infection, and the claimant had lumbar surgery performed on September 22, 1999. In July 1999, Dr. S reviewed the opinions of Dr. D and Dr. R, and agreed with Dr. D that the claimant=s cervical complaints are the result of the injury on _____.

The claimant had the burden to prove the extent of his compensable injury. The 1989 Act defines injury, in pertinent part, as damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. Section 401.011(26). It has been held that the immediate effects of an injury are not solely determinative of the nature and extent of that injury and that the full consequences of the original injury . . . upon the general health and body of the workman are to be considered. Texas Employers' Insurance Association v. Thorn, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ), quoted in Texas Workers' Compensation Commission Appeal No. 94232, decided April 11, 1994. The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. 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. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The hearing officer found the evidence sufficient to prove that the claimant sustained an injury to his neck in the motor vehicle accident on _____. In so determining, the hearing officer found the mechanism of injury consistent with a neck injury which was corroborated by the EMS reports. The carrier, citing Texas Workers= Compensation Commission Appeal No. 952137, decided January 22, 1996, argues that the claimant was required to prove, by a reasonable degree of medical probability, a causal connection between the accident and the claimant=s neck injury. In Appeal No. 952137, we stated:

> From this and the tenor of his discussion of the evidence in general, we conclude that the hearing officer found the claimant had made early complaints of neck pain and based his determination of compensability of a neck injury at least in part on these early complaints. While thus not compelled to address this finding solely in terms of a late or stale complaint and the need under such circumstances for expert medical evidence of causation, we nonetheless refer to Texas Workers' Compensation Commission Appeal No. 92617, decided January 14, 1993, and Texas Workers' Compensation Commission Appeal No. 92326, decided August 28, 1992, for a discussion of the proof of causation when there is a lapse of time between the accident and later symptoms. These cases concede that under certain circumstances, particularly when there is no prompt onset of pain or complaints of pain, a hearing officer may consider common knowledge insufficient to establish causation and thus require proof by expert medical evidence. Whether a particular case which would not normally require proof by expert evidence would require such evidence is largely a question of fact for the hearing officer to decide and seldom can be reduced to a matter of law.

While the hearing officer must determine the facts, whether the law requires expert medical proof to a reasonable medical probability is a question of law. We do not believe that the claimant was required to prove, by a reasonable degree of medical probability, a causal connection between the motor vehicle accident on _____, and the claimant=s neck injury; however, the claimant did present expert medical evidence from Dr. D and Dr. S which support his position. The hearing officer resolved conflicts in the evidence for the claimant and determined that the claimant met his burden to prove that he sustained a neck injury on _____. The evidence established that the claimant had cervical complaints immediately following the injury when treated by EMS. When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight 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 hearing officer's determination that the claimant=s compensable injury of _____, was a producing cause of his cervical spine problems.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge