

APPEAL NO. 000834

On March 27, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Appellant (carrier) appeals the hearing officer's decision that (respondent) claimant sustained a compensable injury on _____. Claimant requests that the hearing officer's decision be affirmed. There is no appeal of the hearing officer's decision on the disability issue.

DECISION

Affirmed as reformed herein to reflect a _____, compensable injury.

Compensable injury, course and scope of employment, injury, and repetitive trauma injury are defined in Sections 401.011(10), (12), (26), and (36), respectively. Claimant had the burden to prove that he was injured in the course and scope of his employment. Claimant testified that he was employed as a stand-up forklift driver beginning in October 1998 and that he used the forklift to stack pallets of computers on 15- to 25-foot high racks. Claimant said that to stack the pallets using the forklift, he had to tilt his head up and down to look up and down and his responses to interrogatories state that his forklift-driving job required repetitive use of his neck and head to look up and down. Claimant said that on _____, when he lifted his head up while using the forklift to put up a pallet, he felt severe pain in his neck, back, and right shoulder. Claimant began treating with Dr. R, for pain in his neck, back, and shoulders on January 4, 1999. Dr. L reported that thoracic spine x-rays done on January 7, 1999, were normal. However, Dr. L reported that cervical spine x-rays done the same day showed straightening of the cervical lordosis with muscle spasm or strain. At the request of the Texas Workers' Compensation Commission, Dr. P examined claimant on June 23, 1999, and Dr. P's impression was that claimant has a strain to the dorsal musculature. Dr. H reported that cervical and thoracic spine MRIs done on July 18, 1999, were normal. Dr. P reported on July 21, 1999, that, with regard to the claimed injury of _____, claimant reached maximum medical improvement on June 23, 1999, with a zero percent impairment rating. In response to a written interrogatory that described claimant's forklift job and asked whether the physical activity of claimant's job could give rise to the injury Dr. P had documented, Dr. P responded in the affirmative and explained that the strain was from claimant's head position.

The hearing officer found that on _____, claimant sustained a work-related injury to his cervical/thoracic area as a result of repetitively looking up and down to complete his forklift duties for employer. The hearing officer's conclusion of law and decision state that claimant sustained a compensable injury on "_____ [sic]." The _____, date of injury is clearly a typographical error. The issue at the benefit review conference was whether claimant sustained a compensable injury on _____, and that was the issue agreed to by the parties at the CCH (along with the disability issue). The hearing officer misstated the date of the compensable injury issue in her decision. We

reform the hearing officer's conclusion of law and decision to state that claimant sustained a compensable injury on _____, which is consistent with the hearing officer's finding of fact. Carrier contends that claimant failed to establish a causal link between his work activities and his claimed injury. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. The hearing officer could consider claimant's testimony as well as the opinion of Dr. P in arriving at her decision. Although there are conflicts in the evidence, such matters were for the hearing officer to resolve as the trier of fact. Strains and sprains sustained in the course and scope of employment are compensable. Hanover Insurance Company v. Johnson, 397 S.W.2d 904 (Tex. Civ. App.-Waco 1965, writ ref'd n.r.e.). We conclude that the hearing officer's decision, as reformed to reflect a _____, compensable injury, is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. Stephens
Appeals Judge

CONCURRING OPINION:

I concur in the result only because there is some evidence, albeit slim, that claimant in some fashion strained himself on one single occasion while performing his work duties. But I cannot agree with the hearing officer's analysis that this resulted from repetitively looking up and down because there is a dearth of evidence to that effect. The claimant, in fact, testified that he used his eyes generally to see where he was going. There is nothing here to indicate, let alone establish, that there were similar or frequent actions that were

both traumatic and repetitive. The details of the workday, generally stated to be 12 hours, simply were not developed. Nor can I be satisfied from Dr. P's reports and answers what he believed the facts of the matter to be. In my opinion, it should be regarded as insufficient as a matter of law to accept testimony only of the hours of a workday and an assertion that some unspecified activity is done "a lot" as probative of repetitive and injurious trauma.

Susan M. Kelley
Appeals Judge