

APPEAL NO. 001330

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 11, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury and did not have disability.

The claimant appealed, arguing that the fairly straightforward case was unduly complicated by the respondent (carrier), who came up with "conflicting" evidence after the benefit review conference. The claimant says there is no evidence to support the hearing officer's observation that the claimant was hurt in an automobile accident and notes that this misinterpretation appears critical to the injury issue determination. The carrier responded, pointing out that it is the hearing officer's duty to sort out conflicting evidence and make findings of fact, which should be upheld by the Appeals Panel. The carrier recites evidence favorable to the decision.

DECISION

We reverse and remand.

The claimant was employed by (employer), a temporary services agency, and was doing construction work at a military base. He said that on _____, as he was climbing around some scaffolding, he slipped and pulled his right arm and shoulder as a result of hanging from the scaffolding.

The claimant said that he developed neck pain and headaches which increased over the next two weeks. He said that when he reported his accident to his supervisor, Mr. B, when it happened, he was merely told to be careful. The claimant agreed that he was told by Mr. B on December 14 or 15 that he was not needed anymore at the job site. The claimant characterized this as a fairly typical layoff after which he likely could be rehired. He said that he sought medical treatment because he was now off work, whereas he had previously feared he could lose his job if he went to the doctor. He went to (medical center) on December 16, 1999.

The claimant said that he was told at the medical center that he pulled a muscle. The claimant thereafter was treated by Dr. L. He returned to work on February 19, 2000, out of financial necessity, doing sheetrocking and framing, but was taken off work again on March 6, 2000, by Dr. L. The claimant, asked what his problems were, said that he had shoulder aches and pains and had trouble lifting and reaching.

The claimant said that when he went to get a paycheck on December 17, he reported his accident once more to Mr. B when inquiring about health care coverage. He said Mr. B told him that coverage would not apply because he waited too long to report the accident.

Mr. B denied that the claimant told him he was hurt on the job. He said that he first became aware of the contended injury when he was contacted on December 27 by a health care facility about insurance coverage. A statement from Mr. B notes that the claimant told him he was hurt while installing some doors. He recalled one time when the claimant came in to work walking stiffly and said he had been hurt in a motorcycle accident. Mr. B said that the claimant did not have right arm problems at all as far as he observed.

Mr. B agreed that two other coworkers said that the claimant reported an injury to them. Statements from these coworkers affirm that the claimant reported shoulder pain to them on December 3. One coworker said he also overheard the claimant mentioning the incident to Mr. B.

The prospect that claimant had a preexisting injury to his shoulder was raised by the carrier. There was a record from the medical center showing that the claimant was admitted for right shoulder pain (origin undescribed) on March 10, 1999, and x-rays were taken at that time. They showed no evidence of fracture, dislocation, or any other bone deformity.

Asked about records from a September 23, 1999, admission to the medical center, the claimant said that he experienced a separated collarbone. The claimant was treated that day and diagnosed with a second degree right acromioclavicular sprain. The history of this injury was that the claimant was wrestling with a friend and was thrown down on his right shoulder. An x-ray that day was compared to his March 1999 x-ray and found to be suggestive of a type I AC joint separation. The claimant said that he wore a sling for a short time after this visit and that pain from this episode had resolved by October 1999.

A report from the medical center treatment dated January 5, 2000, stated a history of accident that the claimant grabbed onto something to break a fall and had shoulder pain ever since. Acute acromioclavicular sprain was diagnosed. X-rays of the right shoulder were normal; the treating doctor at the medical center noted that they showed clavicle resorption. Dr. L's extensive treatment records also note the history of accident recounted by the claimant. Dr. L's treatment focused on claimant's right shoulder and cervical area.

From the discussion in the hearing officer's decision, it appears to us that she plainly understood the December 16 medical center record to reflect that the claimant reported an automobile accident that day. Moreover, this understanding appears to have been an important factor in her determination that claimant was not hurt at work. However, the medical center records from December 16, 1999, show that the claimant reported the onset of his neck and shoulder pain as resulting from catching himself and dangling from his right arm. While the report indicates that the claimant arrived that day by automobile (as opposed to ambulance), we cannot find a reference in this report to an automobile accident as such. What we believe may have happened is that the check box indicating the type of injury (accident or illness) is next to the mode of arrival box where "automobile" has been checked. We believe that the hearing officer may have read these together and misconstrued the automobile reference as one indicating the mechanism of "accident," and

because we believe this misunderstanding was material in her decision, we reverse the determination that the claimant did not sustain a compensable injury and remand the case for further consideration. Because the disability determination depends upon the outcome of the injury issue, we likewise remand for further findings on the issue of disability. While we agree that there are records indicating that claimant had shoulder problems prior to _____, this would not rule out the prospect of aggravation through the events described by the claimant and related to his coworkers.

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 Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge