APPEAL NO. 001406

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 June 6, 2000. He determined that the appellant (claimant) did not sustain a compensable injury to his right shoulder and cervical spine in addition to his compensable left shoulder injury. The claimant appeals and argues that he received a belated exchange of information from the respondent (self-insured) (after the CCH) of pertinent medical information he would have offered in his case. The exchange was sent the day before the CCH (not apparently brought to the CCH so that it could be timely exchanged) and consists of a peer review report from the self-insured that is favorable to the claimant=s case. The claimant argues that he should be reexamined. The self-insured argues that the peer review is not consequential and would not have changed the outcome. The self-insured argues that the decision is supported by the evidence.

DECISION

We affirm the hearing officer=s decision.

The claimant worked as a long-haul truck driver for (employer). He said that on _____, he was inspecting his truck and as he walked toward the back, slipped on some ice and fell forward. The claimant said he caught himself on his elbows, which threw a shock up through his shoulders and neck. The claimant lay there dazed, then rose to return to his cab.

The claimant said as he walked toward his cab, he slipped again on the ice, this time falling backwards and landing on both shoulder. The claimant contended that he hurt his shoulders and his neck. The claimant said he contacted his employer by computer when he returned to his cab, as they were not in the office, and the following Monday, he called and spoke to Ms. B and reported his injury. He said that if Ms. B recorded a history of him falling onto his left shoulder and side during the second fall, this was inaccurate.

The claimant saw a minor emergency doctor referred by his employer and was, in turn, referred to an orthopedic doctor, Dr. D. The claimant contended that Dr. D decided that he would first treat the left shoulder, because it was more seriously injured, and later treat the right shoulder and neck. It was the claimant=s continuing contention that he reported his right shoulder and neck injuries to doctors and physical therapists who treated him. The claimant said that later efforts for Dr. D to have the right shoulder and neck evaluated through testing were denied by the self-insured. The claimant had surgery on his left shoulder on September 14, 1999. He said that he was recovering, but he continued to have numbness, on occasion, in his right shoulder, as well as when he turned his neck a certain way.

The claimant said he had a whiplash injury, also a workers= compensation claim, four or five years ago but had recovered completely. He said that he told Dr. D about this.

The claimant said that he was referred to Dr. G, for an impairment rating (IR), by Dr. D and that Dr. G only rated his left shoulder. The claimant contended that Dr. G never touched his right shoulder even if it was documented in his examination report. A videotape taken by an investigator for the self-insured shows the claimant using both arms but the claimant said that this was well before surgery.

It is fair to say that the claimant=s medical evidence after his accident, until around November 1999, records only pain in and treatment of the claimant=s left shoulder. Dr. G=s IR examination on January 26, 2000, records considerable range of motion (ROM) in the claimant=s right shoulder and much more limited ROM in his left shoulder. Specific degree measurements for each shoulder=s movements are recorded. Dr. G=s cover letter stated that there were no limitations in the claimant=s right upper extremity. A report by a designated doctor noted that he was advised by the Texas Workers= Compensation Commission to evaluate both shoulders, and he did so.

We have reviewed the peer review report attached to the appeal and find it to be of little value, as it is dependent not upon an examination but based upon a review of records and subjective history which did not include the claimant=s treatment records prior to Dr. D=s reports. The reviewer indicates that it is possible that the fall could have aggravated the earlier neck injury. We are satisfied that this report would not have changed the outcome of the case even if it had been presented to the hearing officer, given the weight of the other medical evidence showing a nearly 11-month gap between the accident and attention being directed toward the claimant=s right shoulder. This letter probably would not have caused the rendition of a different decision. Texas Workers= Compensation Commission Appeal No. 92241, decided July 24, 1992.

That being said, there is no reasonable explanation for the self-insured=s attorney to mail the letter to the claimant by regular certified mail on the day before the early morning hearing, the date and time of which are referenced in the letter, when the sender would have to know that this report could not be received in time for the CCH. Because of this, we do not agree that the claimant=s ability to use this document as evidence in a future court proceeding, or another CCH for other purposes, has been lost.

The claimant had the burden to prove the extent of his compensable injury. Texas Workers= Compensation Commission Appeal No. 960733, decided May 24, 1996. In Western Casualty & Surety Company v. Gonzales, 518 S.W.2d 524, 526 (Tex. 1975), the Texas Supreme Court noted that the site of the trauma and its immediate effects are not necessarily determinative of the nature and extent of the compensable injury and that the full consequences of the original injury, together with the effects of its treatment upon the general health and body of the worker, are to be considered. However, a simple chronology of injury following an accident does not equate to proof of a cause and effect relationship between the two. *See* Texas Workers= Compensation Commission Appeal No. 92331, decided August 28, 1992. The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Company

v. Martin, 855 S.W.2d 816 (Tex. App.-Dallas 1993, no writ); Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant=s testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 6921(Tex. Civ. App.-Amarillo 1980, no writ). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole.

The decision of the hearing officer will be set aside only of the evidence supporting the hearing officer=s determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref=d n.r.e.). In this case, the claimant=s case was hampered by the lack of mention of the right shoulder and neck n early records. The hearing officer was not bound to credit his assertion that these were simple omissions. We cannot agree that the evidence in this case merits a reversal under our standard of review and we affirm the hearing officer=s decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Tommy W. Lueders
Appeals Judge