

APPEAL NO. 001504  
FILED AUGUST 7, 2000

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 24, 2000, in \_\_\_\_\_, Texas, with \_\_\_\_\_ presiding as hearing officer. The hearing officer determined that the appellant's (claimant) compensable injury of \_\_\_\_\_, is not the producing cause of reflex sympathetic dystrophy (RSD) in the claimant's lower left leg; and that the claimant had disability from July 16, 1999, through September 1, 1999, for a dog bite.

The claimant appealed and maintains that he proved that the effects of his injury had not ended on September 2, 1999. He argues that he has suffered discrimination because his decision is not in Spanish. The respondent (carrier) responded, highlighting the lack of objective evidence that the claimant has RSD. The carrier asserts that the decision should be affirmed.

DECISION

We affirm.

The hearing officer has done a thorough summary of the evidence which will be only briefly summarized here. The claimant was employed by (employer). On his first day of work, \_\_\_\_\_, he was bitten by some dogs that were released into the yard where he was working on a tree. He sustained a bite on his left calf. The claimant said that his supervisor and coworkers were of no help and told him to continue working. He was not given medication or shots, but said that the wound was cleaned with a "coffee colored" liquid. The claimant sought treatment the next day at an emergency room (ER), where they told him his foot was infected. He did not have an injection that day.

The claimant said he was thereafter treated by (Dr. R), who told him there was nothing the matter but claimant said he nevertheless felt a lot of pain in his foot. The claimant said he was represented by an attorney for six months, who referred him to several doctors, but who eventually dropped his case.

The medical records in the case reflect the following:

- \_\_\_\_\_, ER records reflect no tendon damage or signs of infection in the claimant's calf. The claimant refused an antibiotic injection. He was released back to work in two days.
- Claimant consulted with Dr. R on August 13, 1999, and also reported trouble hearing out of his left ear as the result of an infection. Dr. R

observed that there was a healed wound that was tender to the touch but not warm. He suggested further assessment for a deep abscess.

- On August 30, 1999, claimant was noted to be doing well and having the overriding concern about the dog attack itself. A CT scan showed no hidden problems.

- On September 2, 1999, Dr. R characterized the claimant's cellulitis as "resolved." By September 7, no redness or swelling was noted in the area. Dr. R wrote that the "possibility" of RSD should be assessed.

- On December 8, 1999, Dr. R noted that claimant had generalized anxiety and that further evaluation of a leg contusion was stalled pending the carrier's approval of testing.

- On November 23, 1999, claimant was examined by (Dr. S), a neurologist, who found nothing on clinical examination to suggest a problem such as RSD, and that there was significant functional overlay. On December 15, Dr. S performed an EMG, noted lack of patient effort, but found basically normal results.

- On February 25, 2000, (Dr. W), noting that he found little evidence of RSD, nevertheless suggested a referral to an RSD specialist should be done to rule out the condition.

- Dr. W's brief letters in evidence indicate that he believes that the claimant has RSD.

The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Service Lloyds Insurance Co. 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 621 (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. In order for disability to be found, there must first be a threshold finding of a compensable injury. The hearing officer attributed a generous period of disability to the dog bite, but not beyond the date he found that it had resolved.

Concerning the claimant's contention that he has suffered discrimination, we would point out that the field office has Spanish-speaking employees who are available to assist the claimant and translate his decisions, including this one, as well as answer any questions he may have about the effects of the decisions.

The decision of the hearing officer will be set aside only if 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.). We cannot agree that this was the case here. The record sufficiently supports the hearing officer's determination that the claimant did not sustain RSD as part of his dog bite injury. We affirm this decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge