

APPEAL NO. 001684

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 July 3, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; and that the claimant had disability beginning on February 29, 2000, and continuing through the date of the CCH. The appellant (carrier) appealed, urging that the adverse determinations were against the great weight and preponderance of the evidence, and, in the alternative, that the claimant did not establish the connection or nexus between the claimant's work and his injury. The claimant responded that the hearing officer's decision was supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

The claimant, a 61-year-old employee previously diagnosed with diabetes mellitus, testified he worked for the employer on Friday, _____, and that part of his duties as a heating and air conditioning installer helper consisted of carrying a heavy steel/iron pipe which he performed by pulling the pipe across his shoulder and balancing it with his hand as he carried it to a new location. The claimant testified that on the day of the injury he was wearing a t-shirt and noticed rust on his shirt where the pipe had been lying across his shoulder. He stated that the weight of the pipe caused indentations into his shoulder. The claimant testified that he finished his shift and went home. After he took his evening shower, he noticed that rust had come through the t-shirt which had become embedded in his skin. He asserted that he had an abrasion from the rubbing of the pipe on his shoulder which eventually scabbed and fell off. The claimant admitted that he did not sustain any cuts, lacerations or bruising from the pipe when he carried it on his shoulder.

The claimant testified that he returned to work the next Monday, on February 28, 2000, and by 9:00 a.m. began experiencing "flu-like" symptoms. He told his supervisor that he was not feeling well and subsequently began to vomit. The claimant's supervisor told him to go home around 12:00 p.m. and the claimant testified that he went home and laid down on his sofa on his right side. After sleeping for a period of time, the claimant awakened with a painful stiff right shoulder which he believed was caused by sleeping on his right side.

On Tuesday, February 29, 2000, the claimant testified that his condition had worsened to the extent that it was necessary to go to the hospital. Medical records from this hospital visit reflect that the claimant presented with right shoulder pain and immobility, as of "last night"; the records also note "(recent flu)," and "no injury." The claimant had a slight temperature, with unlabored breathing. His blood pressure was 105/66 and his height and weight noted to be 5'9" and 200 pounds. The claimant provided a history of diabetes mellitus and hypertension and told the triage nurse that he had nausea, vomiting

and diarrhea times one day, which he felt had completed its course, but had awakened with a sore right shoulder. The records do not reflect that the claimant's blood glucose level or serum ketones were tested for ketoacidosis although the claimant had presented with many of the symptoms of this condition. The claimant's skin was noted to be within normal limits. The right shoulder was examined and no bruising or swelling was noted. Over the area where it was marked "laceration injury" were the initials, "N/A." The pain in the right shoulder was noted to be on a level of 4 out of 10 and it was described as "aching" and "continuous."

The attending physician's record from February 29, 2000, reflects that the claimant "thinks that he slept on his shoulder wrong--woke up with pain right shoulder." The doctor also noted that the claimant had "long standing ulnar nerve tingling in his right hand," and "prior injury" was checked off "x 2 as a child" and "NIDDM [non-insulin dependent diabetes mellitus]--off meds . . . not taking D.M. Meds." The physician noted that the skin was intact and there was tenderness in the deltoid area of the right shoulder but no dislocation. There was no swelling, ecchymosis or deformity. He found the abdomen to be non-tender. The claimant was treated with Demerol, both oral and injection, and released with instructions to see his family physician. No insulin was administered. In response to questioning as to why the hospital record did not reflect anything about a scrape from a pipe or an abrasion, the claimant replied that he it did not think to tell anyone about his incident with the pipe. He also testified that no one looked at his shoulder even though that was why he was there; that "they just wanted to get rid of me."

The claimant testified that on Thursday, March 2, 2000, he went to his family doctor who diagnosed him with a torn right rotator cuff and referred him to an orthopaedic surgeon. The claimant testified that on Friday, March 3, 2000, he was examined by the orthopaedic surgeon who concurred with the diagnosis of a possible torn rotator cuff and ordered an MRI. Records of the office visits to these doctors containing a history and physical were not offered by either party. The evidence is unclear as to why a diagnosis of possible rotator cuff tear was made, as asserted by the claimant, given the claimant's testimony at the hearing that he did not have any pain or experience any trauma while carrying the pipe.

The claimant testified that on March 4, 2000, his "flu" symptoms reoccurred/worsened and his left elbow had begun to hurt along with his right shoulder. He was taken to the same hospital where he was initially treated on February 29, 2000. The claimant testified that the doctors "now knew something was wrong and began testing him for other things."

Medical records reflect that the claimant was admitted on March 4, 2000, with complaints of "injured right shoulder while carrying steel last Friday--remains very sleepy with new complaint of left arm pain today." The claimant's skin was noted to be moist and flushed and he had limited movement in both shoulders. The claimant related that he had vomited a week ago, had not vomited since, but still had diarrhea. It was noted that the claimant had decreased renal function, heavy breathing, increased fatigue, fever,

tachycardia (rapid heart beat) and that the claimant had stopped his oral hypoglycemic (non-insulin) diabetic medication and had “re-started three days ago.” The nurse’s notes reflect that the claimant had “recent re-start of his oral med for diabetes--patient not taking because out.” A blood chemistry profile indicated an elevated white blood cell count, abnormally low sodium, troponin (muscle protein inhibiting contractions) and, an extremely high blood glucose level of 612 mg/dL. The claimant explained that normal values for glucose are between 80-120 mg/dL. The claimant was diagnosed with hyperglycemia (high blood sugar) and hyponatremia dehydration (low salt) and treated with insulin (Humulin R).

The next day, on March 5, 2000, a CT of the sinuses was performed and interpreted as normal. On March 6, 2000, a chest x-ray was performed to rule out pneumonia. The x-ray indicated a normal heart and mild, incomplete expansion at the base of both lungs (bibasilar atelectasis). An x-ray of the left elbow demonstrated an old fracture. An echocardiogram revealed no evidence of endocarditis, but did show some mild left ventricular hypertrophy, diminished diastolic function and left atrial enlargement.

A report from Dr. P dated March 6, 2000, reflects a consultation examination for right shoulder and left arm pain. This report reflects a history from the claimant that “he hit his right shoulder with a piece of angle iron 10 days ago He scraped his right shoulder some but really did not make much of it He has not been running any fevers.” The claimant reported that he had been taking Glucophag and Amaryl for his diabetes. Dr. P diagnosed a septic left elbow, but the claimant had a negative right shoulder aspiration. Dr. P noted that the claimant had a healing superficial abrasion on his right shoulder superficial to the acromion and ordered an MRI. He wrote “this will help rule out a septic shoulder. It will also help assess his rotator cuff I strongly suspect he has a rotator cuff tear, and he has just got a subacromial impingement that has been exacerbated by this recent trauma, and this is not at all related to his septic elbow.” The MRI was subsequently performed which, upon interpretation of the films, indicated no definite evidence of a rotator cuff injury, some nonspecific soft tissue edema and moderate degenerative changes.

The claimant was subsequently taken to surgery where an irrigation and debridement of the left elbow was performed. The operative report reflects that the claimant was admitted for nonketotic hyperosmolar acidosis, and “he hit his shoulder about a week and a half ago.” The report showed that the claimant had significant degenerative joint disease in the left elbow. Dr. P noted that the claimant was on Unasyn, an antibiotic, because of the purulent material withdrawn from the left elbow which he believed to contain a gram positive bacteria. Dr. P also noted that the blood glucose level was now under control.

Additional chest and lung studies were completed on March 9 and 10, 2000, which indicated a 50-79% stenosis in the left internal carotid. An MRI was taken on March 11, 2000, for a history of “an inflammatory process involving the right shoulder due to injury association with diabetes.” The report noted that the amount of fluid had increased in the

claimant's right shoulder. Arthritic changes were noted and there was no evidence of a rotator cuff tear or osteomyelitis. The claimant underwent surgery for a septic right shoulder. Dr. P noted that the claimant had multifocal group-B sepsis.

A consultation report from Dr. Pa dated March 14, 2000, reflects a history that "the patient had a recent blunt trauma to the right shoulder area, and this had healed with some bruising. Later on, he presented with chills and fevers and was diagnosed with septic arthritis of the left elbow." Dr. Pa noted that the claimant had cultures returned positive for beta hemolytic streptococcus from blood and joint aspirations. The claimant gave a history to Dr. Pa of no hypertension or hypercholesterolemia and that he had diabetes mellitus treated with medication.

The discharge summary of March 20, 2000, contains an admitting diagnosis of septic arthritis and diabetic ketoacidosis with a history of nausea, vomiting, polydipsia (extreme thirst), fatigue, and malaise when the claimant presented to the hospital for the first time on February 29, 2000. The claimant was started on Glucophage and Amaryl at this time. When the claimant presented on March 4, 2000, he was presumed to have pneumonia. Dr. S noted that it was tough to control the claimant's glucose and he required increasing doses of insulin. The discharge impression was hyperosmolar nonketotic state, old inferior wall myocardial infarction and leukocytosis. During the hospital admission the claimant had been diagnosed with septic arthritis, hyperosmolar nonketotic state, old inferior wall myocardial infarction, group B beta strep bacteremia, balanitis, electrolyte imbalance, hypertension, lack of IV access, insulin requiring diabetes mellitus, stage II pressure ulcer and anasarca (excessive edema [swelling]) secondary to hypoproteinemia.

At the hearing the claimant asserted that his group B beta strep bacteremia and septic shoulder and elbow were caused by the rust on the pipe he carried on _____. The claimant offered a letter from Dr. P dated April 15, 2000, wherein the physician wrote:

On _____, [the claimant] hit his right shoulder with a large piece of angle iron. At the time, he had an abrasion to his superolateral shoulder I think the injury he sustained on _____, is the proximate cause of his subsequent septic joint. Bacteremia occurs on probably a daily basis and it is impossible to prove with any certainty where the source of the bacteremia is. Conversely, it is impossible to prove that his shoulder injury was not the cause of the bacteremia. The constellation of a significant contusion to his shoulder which resulted in local trauma, an immunocompromised patient due to diabetes and advanced age, a skin abrasion which would cause a bacteremia, and the time period from the initial onset of injury to the onset of systemic sepsis symptoms and shoulder pain all combined to suggest very strongly to me that the injury sustained on _____, is the direct cause of his current medical condition.

A letter from Dr. S dated May 8, 2000, contained the following:

[The claimant] was seen by me at [hospital] in March for septic arthritis and resultant uncontrolled diabetes. In my opinion I feel that the cause of his uncontrolled diabetes is a direct result of the septic arthritis. The septic arthritis is a direct result from a bacteria most likely incurred from an abrasion while at work given his duties described.

The claimant offered a letter from Dr. So dated April 28, 2000, in which Dr. So stated "it is my opinion that his infection [is] directly related to the trauma that he received of the shoulder [sic] which caused his shoulder to be predisposed to infection with hematogenous bacteria."

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993. A claimant has the burden of proving by a preponderance of the evidence that an injury occurred while in the course and scope of employment. Reed v. Aetna Casualty & Surety Company, 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). The 1989 Act defines "injury" 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). In proving a compensable injury, a claimant must link the contended injury to an event at the workplace and establish a causal relationship between the injury and the employment. Texas Workers' Compensation Commission Appeal No. 92108, decided May 8, 1992. Where the subject of injury is not so scientific or technical in nature as to require expert testimony, lay testimony and circumstantial evidence may suffice to establish causation. See Travelers Insurance Company v. Stretch, 416 S.W.2d 591 (Tex. Civ. App.-Eastland 1967, writ ref'd n.r.e.). However, where the matter of causation is not an area of common experience, expert or scientific evidence may be essential to satisfactorily establish the link or causation between the injury and the employment. Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992.

The determination of compensability in the present case is ultimately a matter of whether the claimant can prove by reasonable medical probability that there is a causal connection between the claimed injury and the employment. Texas Workers' Compensation Commission Appeal No. 94309, decided April 29, 1994. Reasonable medical probability is determined by consideration of the substance of the testimony, not by semantics or a particular phrase used. Texas Workers' Compensation Commission Appeal No. 970142, decided March 11, 1997 (Unpublished).

In the present case, the claimant asserted that he sustained an abrasion from the pipe rubbing on his shoulder and the rust on the pipe contained a beta hemolytic streptococcus which entered his bloodstream through the abrasion causing the septic arthritis in his left elbow and right shoulder. The hearing officer made the following finding of fact:

FINDING OF FACT:

2. The claimant sustained an injury while within the course and scope of his employment on _____.

The hearing officer did not make a finding as to what injury was sustained; whether it was simply an abrasion to the right shoulder or whether the injury was the septic elbow and shoulder. It was apparent from his discussion of the evidence that he believed the claimant sustained an abrasion on his right shoulder and a bacterium entered through this portal. If so, the claimant had the burden of proving that his subsequent left elbow sepsis naturally resulted from the rust becoming embedded in his skin. We have previously stated in Texas Workers' Compensation Commission Appeal No. 94067, decided February 28, 1994, *citing Maryland Casualty Company v. Rogers*, 86 S.W.2d 867, 871 (Tex. Civ. App.-Austin 1935, writ ref'd) that:

By the word "naturally," as used in the statute, it is not meant that the disease which is shown to have attacked the victim of the accident is such disease as usually and ordinarily follows the accident; but it is only meant that the injury or damage caused by the accident is shown to be such that it is natural for the disease to follow therefrom, considering the human anatomy and the structural portions of the body in their relations to each other. However, the fact that an injury may affect a person's resistance will not mean that a subsequent injury outside the workplace is compensable, where the subsequent disease or infection is not one which flowed naturally from the compensable injury.

The hearing officer concluded that the opinions of the claimant's physicians satisfied the requirement of scientific evidence to support the causal connection between the rusty pipe and the subsequent septic arthritis.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. *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).

In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the

great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied).

Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Resolving the conflict is the province of the hearing officer. Since we find the evidence sufficient to support the determination of the hearing officer, we will not substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

"Disability" means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability, by definition, depends upon there being a compensable injury. *Id.* Given our affirmance of the hearing officer's determination that the claimant sustained a compensable injury on _____, the claimant could establish disability. The claimant testified that he was unable to work and offered a release from work from his doctor. Whether disability exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. We find the evidence sufficient to support the hearing officer's finding of disability.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge