

APPEAL NO. 001799

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 17, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had disability beginning on December 6, 1999, and continuing through April 19, 2000. The appellant (carrier) appealed, contending that these determinations are against the great weight and preponderance of the evidence. The claimant responded that the determinations, including the determination limiting disability, are correct; supported by sufficient evidence; and should be affirmed.

DECISION

Affirmed.

The claimant worked a 6:00 p.m. to 6:00 a.m. shift as a floor hand on an oil rig. He testified that on _____, he was directed to go up on the derrick and help free a jammed pipe. He said that as he did this, the pipe suddenly jerked and struck him on the chest, causing his head to spring backwards. He continued working that day and the next. At the end of the next day, he was confronted by Mr. G, his supervisor, over a safety violation unrelated to the claimed injury. When he reported for work the evening of December 4, 1999, he had a meeting with Mr. P, a tool pusher who again counseled him on the safety violation early that morning. At this point, the claimant first reported his alleged injury and said he obtained permission to go home early. As of the CCH, the claimant was asserting only a cervical injury, which was diagnosed by Dr. C as a cervical strain.

Mr. G testified that the claimant was on the derrick trying to free the pipe on the day in question; that the claimant was working about 95 feet above the floor; and that Mr. G did not see anything regarding an injury. He said the claimant continued working that day without complaints of pain or injury. Mr. P testified that he saw the pipe strike the platform on which the claimant was standing (called a "diving board") and that it was impossible for the pipe to strike the claimant's chest because it would be blocked by the platform. The claimant testified in rebuttal that someone could not clearly see him from the floor and that when he was struck, he was not on the diving board.

The claimant had the burden of proving he sustained a compensable injury as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether he did so could in this case be established by his testimony alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Section 401.011(26) defines injury as damage or harm to the physical structure of the body. This question turned on the credibility of the claimant. The carrier asserts that the evidence established that the claimant was not struck by the pipe, or at least did not sustain an injury as defined by the 1989 Act; that it was physically

impossible for the injury to have occurred if the claimant was standing on the diving board; and that this claim was made in retaliation for the counseling the claimant underwent as a result of the safety violation as evidenced primarily by his not reporting the claimed injury until after the confrontation over the safety incident. The claimant countered that the confrontation had nothing to do with this claim; that he is telling the truth; and that he was not on the diving board when he was struck by the pipe.

Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In her role as fact finder, she considered the evidence and determined what facts had been established. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the testimony of the claimant deemed credible by the hearing officer sufficient evidence to support the finding of a compensable injury. We would further note that records of Dr. C provide sufficient evidence to support the determination that the claimant sustained an injury in the nature of a strain and contusions.

The hearing officer found disability from December 6, 1999, through April 19, 2000. Although the claimant argued at the CCH for a longer period of disability, he has not appealed the finding terminating disability on April 19, 2000. The carrier argues that the claimant did not provide sufficient evidence to support his disability claim, seemingly suggesting that medical evidence is required to prove disability. We have held that a claimant may prove disability by his or her testimony alone. Appeal No. 93560, *supra*. The carrier's additional argument that the claimant did not have disability because of injuries from personal activities in April 1999 appears to have been accepted by the hearing officer and accommodated in the determination ending disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Tommy W. Lueders
Appeals Judge