

APPEAL NO. 002444

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 August 27, 2000. The hearing officer determined that the _____, compensable injury of the respondent (claimant) included a right shoulder injury and that claimant had disability from December 24, 1999, through the date of the hearing. The appellant (carrier) appealed these determinations on sufficiency grounds. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that the _____, compensable injury includes a right shoulder injury. Carrier asserts that: (1) claimant reported only an ant bite injury; (2) claimant did not say in his transcribed statement that he hurt his shoulder and said he was pain free after the ant bites; (3) claimant continued to work after the alleged injury; and (4) no medical report before December 1999 gives any indication of shoulder problems.

Claimant testified that on _____, he was doing maintenance work moving some heavy parking blocks when he felt pain while moving the last block. Claimant said some ants bit him and that he felt pain in his right shoulder. He said he was never sent to the doctor, so he went on his own because of his pain. Claimant said he was given pain medication and that he kept working until December 23, 1999. Claimant testified that his condition worsened, that he was not able to do his work anymore, and that his doctor, Dr. P, took him off work. Claimant testified that he reported his injury to the building manager. An "incident statement," apparently filled out when claimant reported his injury, states that claimant was lifting concrete bumpers and he "got hurt on his right shoulder also fire ants bit him on his right hand." It also states, "because of the damage on his shoulder, he is [losing] the use in his hand." The record contains a transcribed statement that indicates that it was translated from Spanish. The wording of the statement is very awkward and the meaning of the words are unclear.¹ In the statement, claimant indicates that he was carrying blocks to a dumpster and that he carried them on his right shoulder. Claimant said he was tired, that when the ants started to bite him he ran and threw the block, "but this [was] the ones that affected me here the nerve . . . [sic]." Claimant also indicated in the statement that he began feeling numbness and had trouble "grabbing."

Handwritten medical notes from May 1999 indicate that claimant complained of numbness and pain up to his elbow and that he was diagnosed with elbow tendinitis and dermatitis. In a January 2000 medical report, Dr. S stated that claimant noticed swelling

¹It is not clear whether the statement was properly transcribed or translated, but it is difficult to comprehend.

after his ant bites and that, two weeks later, he started noticing weakness of his right hand and forearm. Dr. S noted that an examination of the right shoulder was normal, that claimant had right-hand atrophy, that the muscle atrophy was probably due to ant bites, and that claimant needed a cervical MRI to rule out cervical problems. In a February 23, 2000, report, Dr. P stated that claimant had mild to moderate cervical spasm and tenderness; a positive Phalen's and Tinel's test; that claimant said he had experienced moderate neck pain and mild-to-moderate right anterior upper shoulder symptoms which were generally achy but sometimes sharp; that right shoulder flexion was limited by pain; and that the preliminary primary diagnosis is injury to the brachial plexus with associated atrophy complicated by neuritis or radiculitis. In a March 2000 report, Dr. E stated that claimant's differential diagnosis is "right C8 distribution neuropathy with strength and sensory loss." In a March 24, 2000, report, Dr. P stated that claimant continued to have right-hand symptoms and "frequent decreased right anterior upper shoulder symptoms." Dr. P also recommended a cervical MRI. In an April 28, 2000, report, Dr. P stated that his treatment included manipulation of the glenohumeral joint. An April 2000 nerve conduction study report by Dr. N stated that the study was abnormal with slowing related to the right median nerve. In a June 23, 2000, letter, Dr. P stated that, in his opinion, claimant's symptoms "are a direct result of neurological damage to the brachial plexus sustained when throwing concrete bumpers onto his shoulder." In an August 2000 report, Dr. H stated that claimant's right hand was taking on the characteristic "claw hand" that is typical of ulnar palsies; that claimant injured his right upper extremity carrying large blocks of concrete and sustained a traumatic stretch on the most distal nerve roots; and that the clinical impression is right C8 traumatic palsy regarding the ulnar nerve distribution and dyesthetic pain.

It was claimant's burden to establish that he sustained a right shoulder injury in addition to ant bites on _____. We have reviewed the record and evidence regarding the scope of the compensable injury. The hearing officer considered claimant's testimony and the medical evidence regarding whether claimant sustained a right shoulder injury at work on _____. The hearing officer could find from the evidence that claimant also injured his right shoulder when he sustained ant bites on _____. Claimant's testimony, as well as the medical evidence from Dr. P, support the hearing officer's determinations in this case. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Carrier contends that the hearing officer erred in determining that claimant had disability from December 24, 1999, through the date of the hearing, and asserts that claimant was not taken off work until February 23, 2000. The applicable law regarding disability and our appellate standard of review of sufficiency points of error are stated in Texas Workers' Compensation Commission Appeal No. 000032, decided February 18, 2000. Whether claimant had disability was a fact issue for the hearing officer. Claimant testified that he stopped working on December 23, 1999, and stated that he could not do his work any longer because of pain and loss of strength. The hearing officer heard claimant's testimony, reviewed the medical evidence, and decided what facts the evidence

established regarding the cause of any inability to earn the preinjury wage. Claimant's testimony supported the hearing officer's disability determination. We conclude that the hearing officer's disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge