APPEAL NO. 011243
FILED JULY 16, 2001

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 May 8, 2001. The hearing officer determined that the respondent (claimant) injured his cervical spine during a motor vehicle accident that occurred on _____, and that he had disability from his injury for the period from March 5, 2000, until the date of the CCH.

The appellant (carrier) argues facts on appeal that it believes greatly weigh against these determinations. The claimant seeks affirmance of the hearing officer's resolution of the evidence.

DECISION

We affirm the hearing officer's decision.

The hearing officer has set forth the evidence at some length. We cannot agree that he erred in his determinations. The claimant was a truck driver for the employer, and was injured in a three-vehicle collision on _____. Although immediately thereafter he was aware of toe and thumb injuries, he said that his neck didn't start hurting or feeling stiff until that weekend. The claimant testified to telling a great many people of this; the witnesses for the employer denied this. However, it was agreed by both sides that the claimant reported a neck injury to the insurance company of one of the other vehicles, in a telephone interview overheard by a supervisor, Mr. H, on January 24, 2000. Mr. H said he looked up in surprise when he heard this, and that the claimant winked and kind of smiled and shrugged as he talked to the adjuster. While Mr. H testified that he did not believe that the claimant was "serious," he also interpreted this as the claimant laying the groundwork for a claim against the other vehicle's insurance. He did not testify that he thought the claimant was "joking" or that the claim was not "genuine."

The claimant was first treated by a doctor who gave him medication and did not take him off work. The claimant was eventually taken off work by another doctor on March 4, 2000, and continued to work until then. While the claimant testified that he had improved, he still felt pain and a catch in his neck when he turned it. He agreed that he had felt upset with the employer for his treatment after a prior truck accident in 1999, when his bonus was revoked. The claimant's consistent diagnosis appears to be cervical sprain.

It must be fairly stated that the testimony on both sides of the case was marked by failure of recollection and contradiction. However, it is such conflicting evidence that the hearing officer is uniquely positioned to weigh, having had the opportunity to observe the demeanor of the witnesses during their testimony. An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.- Beaumont 1993, no writ).

There was no issue raised over untimely reporting of the injury; but there was considerable testimony about the delay between the accident and reporting it to anyone for the employer. It is therefore useful to note that a delayed manifestation, or the failure to immediately mention an injury to a health care provider, does not necessarily rule out a connection. *See* Texas Employers Insurance Company v. Stephenson, 496 S.W.2d 184 (Tex. Civ. App.-Amarillo 1973, no writ). Generally, lay testimony establishing a sequence of events, which provides a strong, logically traceable connection between the event and the condition, is sufficient proof of causation. Morgan v. Compugraphic Corp., 675 S.W.2d 729, 733 (Tex. 1984). The claimed neck injury is certainly consistent with the vehicular accident described. Because the carrier emphasized the failure of the claimant to immediately report a neck injury as indicative of the fact that it did not occur, the hearing officer's comment about the January 24th report to Mr. H in thse course of the adjuster interview is not application of a "wrong standard" to the evidence but is responsive to one underpinning of the carrier's defense.

The disability finding is more problematic, and, indeed inferences could be drawn that a cervical sprain, with insignificant findings from an MRI, should not ordinarily result in over a year of disability. No independent medical evaluation is in evidence. A claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.- Houston [1st Dist.] 1987, no writ).

In reviewing the record, we cannot agree that the decision of the hearing officer runs so contrary to the great weight of the evidence so as to be manifestly unfair or unjust. The decision is supported by more than a mere scintilla of evidence. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge