

APPEAL NO. 021403
FILED JULY 16, 2002

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 13, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____. The claimant appeals the determination on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Reversed and rendered.

The hearing officer erred in determining that the claimant did not sustain a compensable injury on _____. The claimant testified that he was moving sections of pipe weighing approximately 40-50 pounds as part of his job duties for his employer. When laying a section of pipe on the ground, the claimant jarred his right thumb on the pipe and heard a popping sound. Within a fairly short time, the claimant's right hand began to swell and stiffen in the area of his thumb, resulting in a loss of grip strength. The claimant was then taken to the emergency room, where x-rays showed an "old fracture deformity distal first metacarpal and secondary degenerative changes involving the first metacarpophalangeal joint. . . ." The claimant's right thumb was placed in a hard cast splint. Shortly thereafter, the claimant went to see the "company doctor," who noted pain and swelling in claimant's right thumb and diagnosed an "injury right thumb." The medical reports also indicated "no acute changes" to claimant's preexisting right thumb fracture and arthritis; however, it appears that this assessment was made without the benefit of the claimant's x-rays. The claimant later sought treatment from a bone specialist. A CT scan was ordered which confirmed extensive osteoarthritis at the right first metacarpophalangeal joint, without acute abnormality. The claimant's doctor opined that the claimant had a preexisting arthritic condition in his right thumb which was aggravated by the jarring incident on _____. The doctor further stated that "it is not uncommon for a badly arthritic joint to become inflamed and symptomatic from minor trauma."

In the "Statement of the Evidence" portion of the decision, the hearing officer states:

Claimant was a very credible witness, the mechanism of injury is very plausible, and Claimant undoubtedly experienced pain in his thumb at the time of the injury and continues, as he testified, to experience some swelling and loss of strength in his right thumb. . . . But there is no indication of any damage or harm or progression of the pre-existing injury, other than an onset of pain, as a result of that incident, and pain is not "damage or harm" for purposes of proving a compensable injury under the Act.

The hearing officer found that the claimant did not sustain damage or harm to the physical structure of his body in the course and scope of his employment on _____.

We believe the hearing officer has overread our prior decisions, which state that “mere pain is not compensable under the 1989 Act.” See Texas Workers' Compensation Commission Appeal No. 92058, decided March 26, 1992. While we have said that pain alone is not an injury, those cases involved a lack of objective or clinical indications of damage or harm to the physical structure of the body. See Appeal No. 92058, *supra*; and *compare* National Union Fire Insurance Company of Pittsburgh v. Janes, 687 S.W.2d 822 (Tex. App.-El Paso 1985, writ ref'd n.r.e.)(where the court held that pain accompanied by swelling and medical evidence of aggravation would support a finding of injury under the statute). Here, the credible evidence shows that the claimant experienced “some swelling and loss of strength in his right thumb,” following the incident of _____. Additionally, the medical evidence from the claimant’s doctor indicates that the claimant’s preexisting arthritic condition in his right thumb was aggravated by the jarring incident. In view of this evidence, we conclude that the hearing officer’s determination that the claimant did not sustain a compensable injury is 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 (Tex. 1986).

The decision and order of the hearing officer are reversed and a new decision rendered that the claimant sustained a compensable injury on _____.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION** for **Petrosurance Casualty Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
T.P.C.I.G.A.
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Roy L. Warren
Appeals Judge