APPEAL NO. 91050
FILED NOVEMBER 27, 1991

On September 26, 1991, a contested case hearing was held. The hearing officer determined that appellant (claimant below) sustained no injury or occupational disease in the course and scope of his employment. Appellant contests the hearing officer's determination and requests that we grant a new hearing after he has obtained additional medical evidence.

DECISION

Finding the evidence of record sufficient to support the hearing officer's decision, and finding no sufficient basis for remanding the case for another hearing, we affirm the hearing officer's decision.

Appellant represented himself at the hearing. He claims that he suffered a repetitive trauma injury to his back while driving a pickup truck for (the "Employer"). Respondent is the Employer's workers' compensation insurance carrier.

Appellant worked for Employer for about two years. His back pain started about June or July of 1990. According to appellant, whenever he sat in the truck he sank down in the seat and felt the bar in the seat back because the seat was worn out. After several months, this became uncomfortable, but he was not in extreme pain. He could not straighten up and drive normally.

Appellant did maintenance and repair work for Employer. He drove about fifteen hundred miles a month and the driving time between jobs was usually fifteen to twenty minutes. He told his supervisor how uncomfortable the truck seat was and obtained permission to tear the cloth off the back of the seat and insert a pillow into the seat. He did not tell his supervisor that he was injured.

The pillow helped, but within a month he could "feel it again," so he restuffed the pillow, doubled it over, and moved it around the back of the seat to make driving in the truck more comfortable. The truck was fairly new, either a 1988 or 1989 model. When he had a long weekend his back would not bother him as bad. A safety class given by Employer showed a video of a driver who had back pain and proper seating was recommended to relieve that problem.

Appellant was terminated from his job on March 28, 1991, for misconduct. The pain in his back continued after his termination. About three or four weeks after termination, appellant went to a chiropractor. The chiropractor told him he could have a "possible slipped disc" but could not be certain without further examinations. Appellant could not afford any more visits to the chiropractor. He then contacted the Workers' Compensation Commission and he notified Employer of his injury on April 26, 1991. He waited to see if

Employer would refer him to a company doctor. When the Employer did not refer him to a doctor, appellant went to the Hospital Emergency Room.

Appellant testified that he was not unable to work because of his injury and that he continued to work after his termination. However, he was unsure of the date he went to work for his new employer as a carpenter. He was subsequently laid off by his new employer. He said that he could work at his new job but not at "full blast." When he visited the (City) Emergency Room in June 1991, he was given muscle relaxers and two weeks off work because of "over-flexed back muscles." He said that the emergency room doctor did not think his problem involved a slipped disc. Several weeks after that his back pain returned. In September 1991, he went back to MB at (City) Emergency Room where he was given more of the same medication and was scheduled for physical therapy on September 30, 1991.

Medical records and reports were in evidence. They show that appellant was treated for complaints of back pain at (City) Hospital Emergency Room on May 3, 1991. The emergency room report shows that appellant told the emergency room doctor that his pain began while driving a truck with a bad seat, but denied any specific trauma to his back. An x-ray taken at that time revealed no abnormalities of the lumbar spine. The emergency room doctor diagnosed "back pain, R/O lumbar disc disease" and noted appellant's condition as "good." These records also show that appellant was treated at the MB at (City) Emergency Room for complaints of low back pain on September 18, 1991. The emergency room doctor prescribed medication for pain and recommended physical therapy and no work for four weeks. Appellant was advised to use a firm mattress to sleep on and not to do any heavy lifting.

It has been held that, to recover workers' compensation benefits, a claimant must prove that his injuries were suffered while he was acting in the course of employment. Rose v. Odiorne, 795 S.W.2d 210 (Tex. App.-Austin 1990, writ denied). There must be a causal connection between the conditions under which the claimant's work was required to be performed and his resulting injury. Garcia v. Texas Indemnity Ins. Co., 209 S.W.2d 333 (Tex. 1948). Under the 1989 Act, a "repetitive trauma injury" means damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." Article 8308-1.03(39).

The record in this case contains scant, if any, evidence that appellant suffered damage or harm to the physical structure of his body as the result of repetitious, physically traumatic activities in his work. The most that can be said from the evidence is that appellant drove a pickup truck with a bad seat, complained of back pain, and was initially diagnosed as possibly having lumbar disc disease, but that his x-ray showed no abnormalities.

We conclude that the hearing officer's determination that appellant sustained no injury or occupational disease in the course and scope of his employment is supported by the evidence in this case. We also conclude that a remand for another hearing in order to allow appellant to present additional medical evidence is not warranted in this case.

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Robert W. Potts
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Joe Sebesta
Appeals Judge