APPEAL NO. 93358

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). On April 12, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The sole issue to be decided at the CCH was: "Did Claimant injure his right eye in the course and scope of his employment?" The hearing officer determined that the appellant, claimant herein, did not injure his right eye in the course and scope of his employment. Claimant contends that the hearing officer misapplied the law to the facts presented at the hearing, and requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent, carrier herein, did not file a response.

DECISION

The decision of the hearing officer is affirmed.

Claimant testified that he was a long distance truck driver employed by (employer), on (date of injury) when he was hauling a load of freight from (cities). He testified that about halfway he hit two bad dips in the road which caused the truck to bounce so hard that claimant hit the top of his head on the top of the cab several times. Claimant testified that about five minutes later he began to experience "half vision" like a shade coming up from the bottom of his eye, so he only could see in the top half of his field of vision. Claimant testified he stopped the truck, rubbed his eye and checked his contact lens. Claimant testified he then got back in his truck and drove to (city). Apparently, within the next day or two, claimant saw (Dr. E), his optometrist, who promptly referred claimant to (Dr. L), an ophthalmologist, who hospitalized claimant and operated on claimant's right eye for a partially detached retina.

The medical evidence indicated, and claimant admitted, claimant has had eye problems for a number of years, had cataract extractions in both eyes and had a surgically repaired partially detached retina of the left eye in May 1990. In a letter report to attorney JM, dated February 2, 1992, (Dr. G), an ophthalmologist, in discussing claimant's complaints with the left eye in June 1991 and present visual acuity, stated "[u]nfortunately, he did not volunteer nor did I elicit any history of trauma." In a memo to claimant's attorney, dated February 22, 1993, Dr. E states "[claimant's] bouncing in a truck would exacerbate his aphakic condition. This could have led to his retinal detachments." A report from Dr. L to carrier's attorney, dated January 18, 1993, states:

> The retinal detachments suffered by [claimant], in my opinion, were not related to his employment as a truck driver.
>
> If he had been struck in the eye or the head while loading or unloading the truck, that sort of thing, certainly I would say there was some relationship. However, just the mere act of driving a truck, or a car for that matter, does not cause retinal detachments to occur.

The hearing officer, in her decision, made the following determinations:

FINDINGS OF FACT

5.There is no evidence which makes CLAIMANT'S job the cause of the detached retina in his right eye by a medical probability.

6.CLAIMANT did not meet his burden to prove that he was injured in the course and scope of his employment.

CONCLUSIONS OF LAW

2.CLAIMANT did not injure his right eye in the course and scope of his employment.

The hearing officer could have reached her ultimate conclusion on any one or more of several theories. The hearing officer could have not believed or given much weight to claimant's testimony that he hit his head on the top of the truck cab after hitting two dips, and that vision problems arose within five minutes. The hearing officer recited that testimony completely in the statement of evidence without comment. (There is no specific indication in the findings or conclusions to indicate whether the hearing officer found this testimony credible or not.) However, the hearing officer, in the statement of evidence recites the view that "[c]laimant did not relate hitting his head on the top of his cab to any of the doctors" and may well have found claimant's testimony at the CCH contradictory to his earlier transcribed statement.

The hearing officer recites that the claimant has the burden to establish that the injury occurred within the course and scope of his employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). This burden can be met by claimant's testimony alone even though the claimant's testimony is that of an interested party and as such only raises an issue of fact for the hearing officer. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). We believe that the hearing officer intended to say in Finding of Fact No. 5 that a detached retina is a condition which is beyond the layman's common experience and which requires expert medical evidence of causation that rises to a medical probability. In many cases the issue of injury may be established by testimony of the claimant alone, even though such lay testimony is contradicted by the opinions of medical experts. "An exception to these well settled general rules is that, when a subject is one of such scientific or technical nature that [the fact finder] cannot properly be assumed to have, or to be able to form, opinions of their own based upon the evidence as a whole and aided by their own experience and knowledge of the subject of injury, only the testimony of experts skilled in that subject has any probative value." Houston General Insurance Company v. Pegues, 514 S.W.2d 492, 495 (Tex. Civ.

App.-Texarkana 1974, writ ref'd n.r.e.).

The Texas Supreme Court has held that a claimant must establish a causal connection between the injury and the employment. Schaefer v. Texas Employers Insurance Association, 612 S.W.2d 199 (Tex. 1980). The hearing officer, in using the term "medical probability," was apparently referring to Schaefer which held that in certain workers' compensation cases expert medical testimony may be required to establish a "reasonable probability" of a causal connection between employment and the present injury. The hearing officer found that expert medical testimony had not established, by a reasonable medical probability, that claimant's detached retina was caused by his employment.

In summary, the hearing officer could have based her conclusions on any one or more theories. The hearing officer, as the sole judge of the weight and credibility of the evidence (Article 8308-6.34(e)), could have found claimant's testimony of bumping his head on the top of the truck cab not to be credible. Or, the hearing officer could have found that a detached retina was not such a condition that was within the layman's common experience and "only the testimony of experts skilled in that subject has any probative value." Pegues, *supra*. The hearing officer could have found that the claimant did not establish, within reasonable medical probability, that claimant's detached retina in the right eye was caused by either his employment generally or by the bump on the head, if the hearing officer found it occurred. We find there is sufficient evidence to support any one or both of these theories. Unless the findings, conclusions and decision of the hearing officer are so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust, there is no basis in law or fact to disturb that determination. Cain v. Bain, 709 S.W.2 175 (Tex. 1986).

The decision of the hearing officer is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge