`APPEAL NO. 950161

This appeal arises under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 14, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as hearing officer. With respect to the issues before her, the hearing officer determined that appellant (claimant) did not timely report his alleged cervical injury to his employer and did not have good cause for his failure to do so and that claimant's (date of injury), compensable injury did not include his cervical injury. Claimant's appeal essentially argues that the hearing officer's determinations are against the great weight of the evidence. Respondent (carrier) urges affirmance on the basis of the sufficiency of the evidence in support of the hearing officer's decision and order.

DECISION

We affirm.

It is undisputed that on (date of injury), claimant sustained a compensable injury in the course and scope of his employment as a mechanic with (employer). Claimant testified that on (date of injury) he was pulling a CV joint from a car, when he felt a pop in his right elbow that was followed by intense pain. Although the medical evidence in this case was presented in a less than clear fashion, it appears that (Dr. F), to whom claimant was apparently referred by (Dr. G), provided the bulk of the treatment on claimant's elbow. In a narrative report of December 1, 1992, Dr. F diagnosed radial tunnel syndrome and lateral epicondylitis, noting that elecrodiagnostic studies performed by (Dr. J) in November 1992 were normal as were x-rays of October 1992 from Dr. G. On January 20, 1993, Dr. F performed right radial decompression surgery and a right lateral epicondyle release on claimant. Claimant testified that as early as March 1993, he began to experience pain in his neck, which radiated into his right arm. Claimant said that he told Dr. F about the pain and Dr. F attributed it to atrophy. Nonetheless, the progress notes in evidence from Dr. F neither refer to neck pain, nor attribute it to atrophy. In progress notes dated June 10, 1993, Dr. F indicates that in his opinion claimant does not need additional surgery and suggests that claimant see a chronic pain specialist, which suggestion claimant refused. Progress notes of August 27, 1993, reiterate claimant's desire for additional surgery and Dr. F's response that he did not "think I can make [claimant] better with an operation. I am concerned about his ability to cope with this, and I have tried to get him to seek psychiatric help with the pain clinic." On September 13, 1993, Dr. F certified that claimant had reached maximum medical improvement (MMI) as of that date, with an impairment rating (IR) of nine percent. The accompanying progress notes of September 13th state claimant's continued desire for additional surgery and Dr. F's opinion that additional surgery was not indicated and would not improve claimant's pain. In October 1993, Dr. F apparently rescinded his MMI determination on the basis of claimant's worsening pain.

On November 16, 1993, claimant was examined by (Dr. H), an orthopedic surgeon, who diagnosed "recalcitrant lateral epicondylitis despite his surgery." On January 18,

1994, Dr. H performed lateral epicondylar reconstruction surgery on claimant's right elbow. Following surgery, claimant apparently participated in a chronic pain program under the direction of (Dr. Ha). In a letter dated June 7, 1994, Dr. Ha certified that claimant reached MMI on that date, with an IR of 14%. In a progress note of August 11, 1994, Dr. Ha states that claimant has not returned to work and "is in the process of getting his cervical spine worked up to rule out herniated disk."

Claimant testified that his neck pain was sporadic but it increased in frequency and severity as time passed. He also stated that as his pain worsened he suspected that he might have a neck injury but his doctors dismissed that possibility and he accepted their opinions on the issue. Claimant maintained that it was not until diagnostic testing was performed in the summer of 1994 that he actually knew he had a cervical injury. He indicated that the diagnostic testing was performed by (Dr. Ge), to whom had been referred by Dr. Ha. There are no records in the file from Dr. Ge and Dr. Ha's records do not reference a referral. Nevertheless, claimant insisted that Dr. Ge diagnosed cervical radiculopathy and a herniated disc and attributed them to the (date of injury), compensable injury. Thereafter, claimant was seen by (Dr. F), a neurosurgeon. In a report of July 11, 1994, Dr. F noted that an MRI revealed disc herniation at C6-7 and that EMG testing suggested possible cervical radiculopathy and myelopathy. Dr. F's August 24, 1994, report repeated the diagnosis of cervical radiculopathy and disc herniation at C6-7. Neither of Dr. F's reports addresses the issue of causation. Claimant testified that he believed that the (date of injury), compensable injury had to be the cause of his cervical injury because he did not have neck pain prior to that date and nothing had happened since the date of injury that could have caused the herniation. In addition, he maintained that Dr. Ge and Dr. F had also told him that the cervical injury was caused by the (date of injury) compensable injury and could not explain why Dr. F's reports did not reflect his causation opinion. In addition, we note that no explanation was offered to explain the absence of Dr. Ge's records.

On the issue of causation, carrier submitted an opinion letter from (Dr. S) dated November 17, 1994, which followed a records review, in which Dr. S stated that he was "unable to relate [claimant's] neck problems to his on-the-job injury to the elbow of [date of injury]." In an earlier report dated July 1, 1994, Dr. S stated:

> There is nothing in the medical records of an objective nature that would indicate a need for the two surgeries and the numerous treatment methods that have been applied to this man. In my judgment, this represents a case where [claimant] would have been much better had he never seen a doctor following the alleged injury of (date of injury).
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> If the diagnosis is correct and the treatment is correct, the outcome is predictable. When the diagnosis is wrong and the treatment is wrong, poor results usually follow. If there was an injury of (date of injury), in medical probability

it was a soft tissue injury. In medical probability, soft tissue injuries heal in four weeks' time without treatment.

On the issue of notice, claimant testified that it was not until the herniated disc and radiculopathy were diagnosed in the summer of 1994 that he knew he had an injury to his cervical spine, which he was required to report to the employer. Claimant testified that shortly after his cervical conditions were diagnosed, he contacted (Mr. P), employer's service manager, and told him of his work-related condition. Claimant testified that he had told Mr. P about having neck pain prior to the summer of 1994, but it was not until after his diagnosis that he could report an actual injury related to the prior compensable injury. Mr. P testified at the hearing that in either July or August of 1994 claimant told him that he was claiming a neck injury, which was related to the prior compensable injury of (date of injury).

It is well-settled that the claimant has the burden of proving the extent of his compensable injury. Texas Workers' Compensation Commission Appeal No. 94232, decided April 11, 1994. A claimant's testimony is that of an interested party and only raises an issue of fact to be resolved by the hearing officer. Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Under the 1989 Act, the hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given thereto. Section 410.165(a). As the fact finder, the hearing officer is required to resolve conflicts and inconsistencies in the evidence, weigh the credibility of the testimony and evidence, make findings of fact and enter conclusions of law. Texas Workers' Compensation Commission Appeal No. 92657, decided January 15, 1993. An appellate 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. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Where sufficient evidence supports the findings and they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, then the decision should not be disturbed. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In this instance, the hearing officer determined that claimant had not carried his burden of proving that his compensable injury extended to the cervical injury. In so doing, the hearing officer discredited claimant's testimony relating to the alleged injury, noting the delayed onset of symptoms and treatment in conjunction with the lack of medical evidence of causation between the (date of injury) compensable injury and the cervical injury diagnosed almost two years later. The hearing officer also resolved the inconsistencies in the other evidence against finding that claimant's (month year) compensable injury included his cervical condition. The hearing officer was acting within her province as the fact finder in so finding. Our review of the record indicates that there is sufficient evidence to support the determination that claimant's work-related injury did not include the cervical injury and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Texas Workers' Compensation Commission Appeal

No. 92706, decided February 1, 1993. Therefore, there is no basis for disturbing that decision on appeal. Cain, *supra*.

Next, we turn to the issue of whether claimant timely notified his employer of his injury. The hearing officer found that claimant did not report his injury to his employer within the required 30-day period and did not have good cause for his failure to do so. While we note that our affirmance of the determination that claimant's compensable injury did not include the cervical injury tends to make the issue of timely notice moot, we nevertheless will address the issue in that it was specifically appealed to us and was incorrectly decided by the hearing officer. In Texas Workers' Compensation Commission Appeal No. 941103, decided October 3, 1994, the Appeals Panel determined that in reporting an injury to his employer, an employee is required to report only the general nature of the injury and the fact that it is job related. The notice "need not apprise the employer of the exact time, place and extent of the injury." Id. (citing DeAnda v. Home Insurance Co., 618 S.W.2d 529 (Tex. 1980)). In Appeal No. 941103, we further relied on the cases of Texas Indemnity Insurance Co. v. Bridges, 52 S.W.2d 1075 (Tex. Civ. App.-Eastland 1932, writ ref'd) and International Insurance Co. v. Archuleta, 641 S.W.2d 295 (Tex. App.-El Paso 1982), *rev'd on other grounds*, 667 S.W.2d 120 (Tex. 1984) as support for the proposition that the statutory notice provision does not require that the injury "must be described in detail and with formality." Bridges, 52 S.W.2d at 1078. That is, "proof of notice of a specific injury may be sufficient to permit a claimant to recover for a general injury." Archuleta, 641 S.W.2d at 297. In this instance, it is undisputed that claimant timely reported his (date of injury), injury to his employer. That was the only notice he was required to give under the circumstances of this case. When claimant recognized that his cervical condition was the proximate result of his prior compensable injury, he was not required to again notify his employer of an injury, because he had already satisfied the statutory notice requirement with respect to the (month year) injury. The hearing officer erred in determining the notice issue adversely to the claimant in that a new notice requirement was never triggered in this case. However, given our affirmance of the determination that claimant's compensable injury did not extend to the cervical injury, that error does not affect the outcome herein. The hearing officer's conclusion that claimant is not entitled to workers' compensation benefits in this instance is supported by her determination that the compensable injury did not extend to the cervical injury, which determination we found was supported by sufficient evidence so as not to be clearly wrong or manifestly unjust.

The decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge