APPEAL NO. 931015

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001, *et seq*. (1989 Act) (formerly V.A.C.S., Article 8308-1.01, *et seq*.). On September 28, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The sole issue to be resolved at the CCH was: "Is there a causal connection between Claimant's present psychological problems--anxiety and depression--and the original accident of (date of injury)?" The hearing officer determined that the claimant's depression and anxiety were not causally connected to her neck and shoulder injury and are therefore not compensable.

Appellant, claimant herein, contends that the hearing officer did not accurately consider the evidence presented and requests that we reverse the hearing officer's decision or, in the alternative, remand the matter for the development of further evidence. Respondent, carrier herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

It is undisputed that claimant sustained a compensable injury to her neck and back lifting a fax machine on (date of injury), while employed by (employer), the employer. Claimant testified she saw (Dr. H), her family physician, on January 18, 1991. Dr. H diagnosed a herniated cervical disc and accompanying radiculopathy, and treated claimant conservatively by prescribing pain medication, muscle relaxants and physical therapy. Claimant received various physical therapy administered by (Ms. M).

Dr. H, apparently in August 1991, referred claimant to (Dr. Ho), a neurologist. In a report dated August 14, 1991, Dr. Ho noted "[l]eft arm and neck pain, and paresthesias, with some decrease pin prick in the left arm." Claimant continued to see Dr. Ho as noted in progress notes of September 4th, October 7th, October 24, 1991, and January 13, 1992. Dr. Ho prescribed various medications mentioning only claimant's cervical, musculoskeletal and neck pain.

Claimant testified that sometime in early 1992, she became dissatisfied with Dr. H because he did not seem to understand her problems, only prescribed medication and was "very elderly." Claimant saw (Dr. P), a neurosurgeon in March 1992. In a report dated March 11, 1992, Dr. P recounted claimant's history, physical therapy, noted a "severe sleep disturbance," but stated "she does not appear to be in any acute distress." Dr. P concluded claimant "may have a cervical nerve root irritation syndrome with a superimposed depression." Dr. P prescribed various medications, including an antidepressant. The record is unclear why claimant stopped seeing Dr. P.

By report dated June 8, 1992, Dr. H stated claimant had reached maximum medical improvement (MMI) and that she "has no permanent disability . .. [and] no documented

objective laboratory or clinical findings of impairment." Claimant next saw (Dr. Pz) on June 9, 1992. By report dated June 22, 1992, Dr. Pz indicated he had referred claimant to another neurologist but that she failed to keep the appointment. Dr. Pz notes "[f]inally, she is seen also for fatigue. I have found no objective etiology for this and have entertained the possibility of depression or possible (sic) secondary to the underlying neurologic disability."

Claimant testified that Dr. Pz referred her to (Dr. G), a neurologist. Dr. G, in a report dated June 29, 1992, confirmed the referral from Dr. Pz, recited claimant's history and the results of his examination. Dr. G, in that report, stated, "[m]y feeling is the patient had primarily a cervical and left shoulder injury." Dr. G stated that he was going to set up various tests and noted ". .. concerning the fatigue, I'm not sure what that's due to." In a follow-up report dated July 9, 1992, Dr. G increased a medication and concurred in Dr. Pz's recommendation that claimant go on "vacation out of town to decrease her stress levels. . . ." By note dated October 30, 1992, Dr. G stated:

> This patient is felt to have post-traumatic stress disorder with nervousness and anxiety. I think the anxiety is a reaction to her injury and chronic pain. Ativan is a minor tranquilizer and is often useful and considered standard treatment for anxiety associated with a post-traumatic stress disorder. I think this all relates to her job-related accident.

Dr. G had referred claimant to (Dr. Po), a board certified psychiatrist. Dr. Po examined claimant on October 15, 1992, after reciting medical, family, marital and medication history (along with other items) made a diagnosis of "Major Depression, depressed, with suicidal ideations." Dr. Po recommended "extensive pain and depression management" with the comment "[t]he risk is high for evolving into Post Traumatic Stress Disorder."

Carrier arranged for a "Rehabilitation Progress Report" by nurses with Med Care Analysts. The nurses contacted Dr. Po ". . . in order to ascertain the physician's opinion regarding claimant's current symptomatology as related to her injury." Two nurses quote Dr. Po as saying that claimant's stress symptomatology is caused by:

> 1).A basic borderline personality disorder which was in place prior to the injury. The physician stated that he would need to have an MMPI performed to substantiate this opinion.
>
> 2.)Dealing with the insurance company.
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> The physician went on to state "I do not think the injury precipitated this behavior." The physician was then questioned regarding his diagnosis of "major depression, depressed,with suicidal ideations" in his report of October 15, 1992. This rehabilitation nurse questioned if the claimant was

in any danger regarding her "suicidal ideations." The physician responded that

[claimant] was "not in immediate need of confinement" but that she would need "extensive pain and depression management."

Claimant at some time apparently had surgery which claimant states has granted her some relief. Claimant testified at the time of the hearing that she is not on medication.

The hearing officer determined that claimant's depression and anxiety were not causally connected to her neck and shoulder injury, noting in her discussion that only Dr. G, a neurologist, asserted a causal connection and "his opinion was apparently based on the report of [Dr. Po], the psychiatrist to whom he had referred the claimant." The hearing officer then recites that "[t]hereafter [Dr. Po] expressly denied that the injury was a precipitating cause of the claimant's psychological problems." We would note that this sentence would more accurately read that Dr. Po is quoted by a third person as expressly denying that the injury was the cause of claimant's psychiatric problems. There is no report directly from Dr. Po stating what the nurses quote him as saying. Claimant expresses her strong disagreement with the hearing officer's decision, virtually rebutting each sentence line by line. Additionally, claimant disputes Dr. Po's report and submits as fact opinion and testimony not submitted at the CCH.

The Appeals Panel will not consider claimant's testimony which is submitted for the first time on appeal and was not before the hearing officer, as we are limited to considering the record developed at the CCH. *See* Section 410.203(a)(1). However, we consider the opinions expressed by the claimant regarding her medication and relationship to the various health care providers as not being so material to probably change the decision and do not require that the case be remanded. Texas Workers' Compensation Commission Appeal No. 93943, decided December 2, 1993.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury. *See* Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Claimant attempts to do so through her testimony that in early 1992 she became depressed. Claimant's depression is addressed for the first time by medical reports in October 1992. Dr. G was apparently concerned enough about the condition to refer claimant to a psychiatrist, Dr. Po. Although claimant clearly disputes Dr. Po's findings and

the manner in which he reached his conclusions, Dr. Po made a diagnosis of major depression. It is apparently on this psychiatric evaluation that Dr. G bases his October 30, 1992, opinion that claimant has a post-traumatic stress disorder which is related to her job-related accident. The carrier seeks to rebut Dr. G's medical opinion through an interview two nurses had with Dr. Po, where Dr. Po allegedly explains his prior opinion and is quoted as saying claimant had a basic borderline personality disorder prior to the injury and claimant's anxiety was brought on by dealing with the insurance company. Carrier points out that frustration and depression resulting from dealing with the "system" (i.e., insurance company) is not the equivalent to depression resulting from an injury. The positions and interpretation placed on the evidence by the parties is clearly and diametrically in opposition. The medical reports, followed in a chronological progression, support claimant's testimony that initially she sustained a cervical spine and neck injury which was treated by muscle relaxants and which, over time, grew worse. However, only two of the reports, Dr. G's and the Med Care Analyst reports, shed any light on the issue of causation. Whether claimant's depression and anxiety were caused by the initial injury or whether claimant had an underlying borderline personality disorder which was brought to the fore by dealing with the system and the insurance company is a factual determination for the trier of fact.

As the hearing officer announced at the beginning of the CCH, the hearing officer, as the fact finder, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility to be given the evidence. Section 410.165(a). With regard to inconsistencies and contradictions that the claimant notes in the various medical reports, it is the hearing officer's duty to resolve conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing office considered the various medical reports, heard the claimant's testimony and observed her demeanor and concluded that although the claimant suffered from depression and anxiety it was not caused by her job-related injury. There is sufficient evidence in the record in the form of the Med Care Analyst's report to support the hearing officer's decision.

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 620 (Tex. App.-El Paso 1991, writ denied.) When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming

weight of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We do not so find and accordingly the decision of the hearing officer is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge