

APPEAL NO. 931132

On October 20, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. Section 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq.*). The issue at the hearing concerned the extent of the injury sustained by the appellant (claimant) from exposure to a chemical substance at work on (date of injury). The hearing officer determined that the claimant did not establish that the injury she sustained on (date of injury), extended to her rectocele, psychiatric, and eye problems and decided that the claimant is not entitled to workers' compensation benefits for those conditions. The claimant disagrees with the hearing officer's decision and requests that we reverse it and render a decision in her favor. The respondent (carrier) responds that the claimant's appeal was not timely filed and that the hearing officer's decision is supported by the evidence.

DECISION

We affirm the decision and order of the hearing officer.

The claimant's request for review was timely filed. Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed to the parties on November 29, 1993, with a cover letter dated November 24, 1993. The appeal is postmarked December 16, 1993, and was received by the Commission on December 20, 1993. The appeal states that the claimant's attorney received the decision December 1, 1993, but does not indicate the date the claimant received the decision. We have held that the operative date for determining the timeliness of a claimant's appeal is the date the claimant received the decision. Texas Workers' Compensation Commission Appeal No. 93775, decided October 12, 1993. In this case, regardless of whether the date of receipt of the hearing officer's decision is determined by using the five day deemed receipt provision of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)), or is determined by using the December 1, 1993, date the claimant's attorney says she received the decision (which is three days earlier than the claimant is deemed to have received the decision under Rule 102.5(h)), the appeal is presumed to be timely filed under Rule 143.3(c).

On (date of injury), the claimant was working as a registered nurse for her employer, (employer), when a maintenance person attempted to unclog a sink drain in the room the claimant was in with bleach and hydrogen peroxide. The claimant said that the "chemicals" caused fumes which she inhaled as she removed a patient from the room. Several doctors have diagnosed the claimant as having reactive airway dysfunction syndrome (RADS) which they attribute to the exposure to the fumes on (date of injury). Apparently, the carrier has not contested the claimant's claim that her RADS was caused by the work-related exposure to fumes.

The first issue at the hearing was whether the claimant's rectocele, which required

surgery, was a result of the compensable injury of (date of injury). According to Dorland's Illustrated Medical Dictionary, 27th Edition, a "rectocele" is a "hernial protrusion of part of the rectum into the vagina." The claimant claims that various medications prescribed by her doctors for her RADS caused her to be constipated which in turn caused the rectocele condition for which she had surgery in November 1992. (Dr. N), who treated the claimant, opined that "[s]ome of her recent medicines have caused constipation and may have caused her rectocele." The carrier requested (Company A) to have the claimant's medical records reviewed by a physician. Company A reported that their "physician advisor," who specializes in internal and occupational medicine, reviewed the medical records and it was that doctor's opinion that "the available information indicates to this reviewer that the rectocele is related to a personal health problem and may have, in fact, contributed to or caused her constipation in addition to probable lack of exercise and inadequate dietary roughage, rather than any medications." The claimant contends that the hearing officer's conclusion that her rectocele problem did not result from her compensable injury of (date of injury), is against the great weight of the evidence.

The second issue at the hearing was whether the claimant's psychiatric problem, which required treatment, was a result of her compensable injury of (date of injury). For several months during 1988 and 1991 the claimant was prescribed anti-depressant medication due to a divorce and a sexual assault. The claimant said her problems with depression had resolved by the time of her work-related injury on (date of injury). However, she said that about two months after her (date of injury) injury she again became depressed and she claimed that her depression was caused by her injury. (Dr. Y) performed a psychiatric evaluation of the claimant in January 1993 and concluded that the claimant suffered from major depression and that the claimant "has multiple stressors in her life at this time and appears to be a good candidate for psychotherapy." In July 1993, (SA), L.C.S.W., performed a psychological evaluation of the claimant and concluded that "[p]atient's life has changed significantly since this exposure and she has had much difficulty adjusting to her illness." The physician who reviewed the claimant's medical records at the request of the carrier opined that "the available information indicates [claimant's] considerable pre-existing psychiatric symptomatology and concurrent personal social factors (such as her husband not receiving a substantial income since he was on scholarship as a student) are more likely than not the reason for her psychiatric problems rather than her recurrent bronchospastic episodes." The claimant contends that the hearing officer's conclusion that her psychiatric problems did not result from the compensable injury of (date of injury), is against the great weight and preponderance of the evidence.

The third issue at the hearing was whether the claimant's "burning of the eyes" resulted from the compensable injury of (date of injury). The claimant testified that when she was exposed to the fumes at work her eyes burned, itched, and watered. On (date) she reported to her employer that, among other things, the fumes caused "burning eyes." However, the claimant did not have an eye examination until June 18, 1993, and it was reported at that time that she had a normal eye examination "except myopia," and that no treatment was needed. According to Dorland's Illustrated Medical Dictionary, 27th Edition,

"myopia" is also called nearsightedness. The claimant said that she was nearsighted before her exposure to fumes on (date of injury) and that her eyeglass prescription had not changed from before the injury or had changed only a "teeny bit." The hearing officer found that the claimant may have experienced temporary pain, but did not sustain an injury to her eyes caused by the chemical exposure of (date of injury), and concluded that the claimant does not have an injury to her eyes as a result of the compensable injury sustained on (date of injury). The claimant contends that the finding and conclusion of no eye injury are against the great weight and preponderance of the evidence.

In reviewing this case we are mindful that in Texas Employers Insurance Association v. Thorn, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ), the court stated that "[u]nder our workers' compensation law, the immediate effects of the original injury are not solely determinative of the nature and extent of the compensable injury." And, in Western Casualty And Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975), the court stated that "[t]he full consequences of the original injury, together with the effects of its treatment, upon the general health and body of the workman are to be considered."

In the instant case there is conflicting evidence as to whether medication for the compensable injury caused constipation which in turn caused the claimant's rectocele condition. There is also conflicting evidence as to whether the claimant's depression was caused by the injury of (date of injury). There is little, if any, evidence to support the claimant's claim of an eye injury considering her normal eye examination. The issues as to the extent of the claimant's injury presented questions of fact for the hearing officer to determine. The hearing officer is the judge of the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts and contradictions in the testimony, it is the duty of the finder of fact, in this case the hearing officer, to consider these conflicts and contradictions and determine what facts have been established. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The fact finder also resolves conflicts and inconsistencies in the testimony of expert medical witnesses. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. Civ. App.-Houston [14th Dist.] 1984, no writ).

Having reviewed the record, we conclude that the hearing officer's conclusions that the claimant's compensable injury of (date of injury), did not extend to her rectocele and psychiatric problems, and his conclusion that the claimant did not sustain an eye injury as a result of the compensable injury, are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The claimant also contends on appeal that the carrier should reimburse her for her contact lenses which she claims were ruined by exposure to the fumes. The claimant testified that sometime after she was exposed to the fumes, she put her contact lenses in a bottle of "enzyme cleaner" where they turned purple and disintegrated. Although the claimant argued at the hearing that the carrier should reimburse her for new contact lenses,

the matter of reimbursement for contact lenses was not specifically identified as an issue to be resolved at the hearing and no findings of fact on that matter were made by the hearing officer. Thus, the matter of reimbursement for contact lenses will not be considered for the first time on appeal. See e.g. Texas Workers' Compensation Commission Appeal No. 93378, decided June 30, 1993. While not deciding the appeal point regarding contact lenses, we do observe that, based on the record, any finding of a connection between exposure to the fumes and the subsequent destruction of the contact lenses while being cleaned in another substance would be based upon sheer speculation. We further observe that Section 401.011(10) defines a "compensable injury" as "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle," and that Section 401.011(26) defines "injury" as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 408.021(a) provides in part that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The claimant has cited no authority in support of her contention on appeal that "destruction of the corrective lenses are a part of the compensable injury," and we have found no legal authority under Texas law which would support that proposition under the particular circumstances presented in this case. See e.g. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Janes 687 S.W.2d 822 (Tex. App.-El Paso 1985, writ ref'd n. r. e.) (breaking of temporary metal plate used to repair previously fractured leg where there was no breaking of bone in the leg was not an "injury" under workers' compensation law). Compare, Texas Workers' Compensation Commission Appeal No. 91001, decided July 1, 1991, (there was a direct casual connection or nexus between the injury to the employee's stump and the need for replacement of the artificial leg damaged in the employee's fall). In the instant case, the claimant sustained no injury to her eyes which required replacement of contact lenses. The contact lenses may have been damaged by the exposure to fumes, but there is no causal connection between the injury to the claimant's body, that is her RADS condition, and the need for replacement of the lenses. The contact lenses were simply not a part of the "physical structure of the [claimant's] body" and thus the destruction of the lenses would not amount to an "injury" as defined by the 1989 Act. Furthermore, since the claimant sustained no injury to her eyes there is no basis under Section 408.021(a) to conclude that new contact lenses are reasonably required by the nature of the injury, that is, the RADS condition which is a respiratory condition and not an eye injury.

The decision and order of the hearing officer are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge