APPEAL NO. 931136

This appeal is brought pursuant to 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*.). A contested case hearing was held on November 17, 1993, in (city), Texas, with (hearing officer) presiding as hearing officer. On the single issue presented, the hearing officer determined that the respondent's (claimant) problems with tooth "#10" were the "natural result" of health care provided for a compensable injury she sustained on (date of injury). The appellant (carrier) appeals arguing that there was insufficient evidence to support this decision. No response has been received from the claimant.

DECISION

The decision of the hearing officer is reversed and a new decision is rendered that the claimant's tooth injury was not caused by medical care given in response to her injury of (date of injury).

It is not disputed that the claimant sustained a compensable injury on (date of injury), for which she underwent surgery on her left elbow on March 4, 1993. The surgery was performed under general anesthesia. The claimant testified that when she woke from the surgery, she had a throbbing pain in her tooth "#10". She first sought treatment from her dentist, (Dr. S) for this pain on April 5, 1993. An entry in his treatment record for this date states: "tooth traumatized while pt. under general anesthesia." He attributed the pain to a possible root fracture and infection. He tried to save the tooth with a root canal procedure, but with no apparent relief from the pain. An oral surgeon (Dr. C) removed the tooth on April 22, 1993. No statement or report from Dr. C was in evidence. The claimant testified that although she had previous work done on this tooth in early 1992, which she described as a root canal, but which her dental records describe as a crown, it did not bother her up to the time of the elbow surgery. She further testified that in preparation for the elbow surgery, a partial denture was removed from an adjoining tooth. She contended at the hearing that during intubation in the administration of the anesthesia by (Dr. T) the tube in her mouth traumatized this tooth resulting in its extraction and replacement with a denture. She seeks payment of the associated dental bills.

In addition to her own testimony, claimant's evidence consisted of letters of April 12 and July 9, 1993, from Dr. S and a letter of May 12, 1993, from Dr. T. In his letter of April 12th, Dr. S stated that the claimant's symptoms "were consistent with trauma apparently suffered while under general anesthesia . . . . " (Emphasis supplied). He further noted that during the root canal procedure, he did not detect root fracture, but did not rule out this possibility. In his follow-up letter of July 9th, Dr. S remarked that there was a "high probability" that a root fracture was the cause of the pain which would be "consistent" with her history. He "suspects" the tooth was traumatized during the intubation procedure. In his May 12th letter, Dr. T states that "injury to the teeth during the perioperative period is a well-known complication, especially to artificial teeth." He further says:

I am very sure that the injury to her tooth did not occur during the intubation and subsequent anesthesia. In the (city) I state that "Induction and Intubation were performed smoothly, and with ease." Had the tooth been damaged at that time, I most definitely would have documented it thoroughly.

I cannot speculate, however, how [claimant's] tooth was damaged.

In an affidavit, Dr. T confirmed that, in his opinion, in all reasonable medical probability the claimant did not injure her tooth on March 4, 1993, as a result of the administration of anesthesia.

The claimant in a worker's compensation case has the burden to prove by a preponderance of the evidence that she sustained a compensable injury in the course and scope of her employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Complications or subsequent injury caused by the treatment of a compensable injury are also compensable. Texas Workers' Compensation Commission Appeal No. 93861, decided November 15, 1993, and Texas Workers' Compensation Commission Appeal No. 92540, decided November 19, 1992. Whether the subsequent injury was caused by medical treatment of the original compensable injury is generally one of fact. Texas Workers' Compensation Commission Appeal No. 931053, decided December 28, 1993. The hearing officer, as fact finder, is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgement 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 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629 (Tex. 1986).

Injury may be proven by the testimony of the claimant alone and medical or expert evidence is not required to establish that particular conduct resulted in the claimed injury, except in those cases where the subject is so technical in nature that a fact finder lacks the ability from common experience and knowledge to find a causal connection as a matter of reasonable medical probability. *See* Texas Workers' Compensation Commission Appeal No. 93560, decided on August 19, 1993, and Texas Workers' Compensation Commission Appeal No. 92598, decided December 23, 1992. Ordinary trauma can often be established as the cause of an injury from the testimony of a claimant who actually experiences, and is aware of, the trauma. However, when the purported mechanism of the trauma is unusual and not a matter within common experience, or when a connection between the trauma and alleged injury is obscure, expert evidence relevant to the question of causation may be necessary before a fact finder can conclude the trauma caused the injury.

In the case under appeal, the claimed tooth fracture and infection which required

extraction was alleged to be the result of trauma from an intubation tube which allegedly occurred while the claimant was under general anesthesia and unconscious. She could only say that her tooth hurt sometime after, but not before, the operation and points to no conscious experience of an actual trauma to the tooth. Considering the nature and circumstances of the alleged injury, we hold in this case that expert evidence was required to establish that the intubation process somehow caused a tooth fracture. Under the circumstances the claimant's attribution of pain, fracture and subsequent infection to intubation is not probative evidence on the question of causation. There was no evidence about the nature of this tube, or how it was inserted or the circumstances of its use. The medical evidence of the anesthesiologist consisted only of a straight forward denial that any injury occurred the way the claimant alleges, though he conceded that "teeth can be injured in the post-operative period." Dr. S, relying on the claimant's account that the "tooth was asymptomatic prior to her surgery," offers only a suspicion, without further explanation, that intubation somehow caused the fracture. Such suspicion does not establish a reasonable medical probability that intubation caused the injury. *See* Parker v. Employers Mutual Liability Insurance Company of Wisconsin, 440 S.W.2d 43 (Tex. 1969). Facts set out in the history portion of a medical record have also been held not to be probative evidence that an accident in fact occurred as stated. *See* Presley v. Royal Indemnity Company, 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). Having reviewed the record, we believe that the evidence in this case amounts to no more than surmise and speculation by the claimant and Dr. S about the cause of the claimant's asserted injury and was insufficient to meet the claimant's burden of proof. For this reason, the finding of the hearing officer that there was a causal connection between the treatment rendered to the claimant and her tooth injury is contrary to the great weight and preponderance of the evidence as to be clearly wrong and manifest unjust.

We reverse the decision of the hearing officer and render a decision that the claimant's problems with tooth "#10" were not the result of an injury she sustained on (date of injury), in the course and scope of employment.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge