APPEAL NO. 93490

The 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 May 12, 1993, a contested case hearing (CCH) was held. The issues at the CCH were: Whether the claimant had suffered a compensable injury, if so, has the claimant reached maximum medical improvement (MMI) and what is the claimant's impairment rating. The hearing officer determined that the claimant suffered a compensable injury in the course and scope of her employment, reached MMI on August 14, 1992, with a four percent whole body impairment rating. Appellant, a self-insured governmental entity (county herein), disputes certain findings of fact and conclusions of law, and specifically contends the hearing officer misquoted and represented the designated doctor's report. The county thereby requests that we reverse the hearing officer's decision and render a decision in its favor. Respondent, claimant, rebuts the county's allegations and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

Claimant worked as a Deputy Tax Assessor Collector for the county. She testified that her job entailed preparing motor vehicle registration reports, boat registration reports, sales tax reports, separation of renewal forms, preparing title applications and frequent use of a typewriter, a computer, calculators, printers, copiers, and a cash register. Claimant testified that in the spring of 1990, she began noticing finger, hand, wrist, and arm pain that occasionally radiated to her shoulders. Claimant states she continued work using over the counter medication until February 7, 1991, when she saw (Dr. A) because of extreme pain. According to claimant, Dr. A took x-rays and gave a diagnosis of "early osteoarthritis of the hands." Dr. A referred claimant to a rheumatologist, (Dr. R), who became the principal treating doctor.

Dr. R saw claimant a number of times throughout claimant's course of treatment. Dr. R referred claimant to (Dr. E) for nerve conduction studies and a electromyographic study which were done on _____. Claimant testified that Dr. E had told her she did not have carpal tunnel syndrome but had "a repetitive motion injury." Based on Dr. E's studies, Dr. R took claimant off work from June 20, 1991, through July 31, 1991, to see if not working would make a difference. On July 30, 1991, claimant saw Dr. R again and he took claimant off work, first until the end of August 1991, then to the end of September 1991. According to claimant she was advised by Drs. E and R on or about June 20, 1991, her injury was work related. Claimant filed a report of injury with the county on August 23, 1991. Timely notice of the injury was not contested and is not an issue.

Claimant continued treating with Dr. R throughout 1991. Sometime in latter 1991, the county's adjustor sent claimant's medical records to (Dr. V) for review. Dr. V in a report dated January 9, 1992, opined it does not appear the claimant's "job activities aggravated a

condition of osteoarthritis . . . and if indeed [claimant] has osteoarthritis . . . it would not appear to be work related." Claimant continued treatment with Dr. R and on May 8, 1992, the county's adjustor sent claimant to (Dr. G) for a medical evaluation. In a report dated May 8, 1992, Dr. G stated his impression was: "[a]t the present time, this patient's symptoms appear to be primarily related to degenerative arthritis in the basal joint of the left thumb. This condition was not caused by her previous job, but probably was aggravated by the activities of that job."

Claimant testified that benefit review conferences were held on May 27, 1992, and July 24, 1992. Dr. G in a note in claimant's chart stated on July 7, 1992, that claimant had not reached MMI because her degenerative arthritis ". . . has a natural history of progression." Dr. G further stated ". . . whatever aggravation of [claimant's] preexisting degenerative arthritis was caused by the injury of _____, has probably been reached at this point." In an August 14, 1992, note in claimant's chart, Dr. G states, after carrier had sent him a letter defining MMI, ". . . this patient probably has reached (MMI) with respect to the injury of _____." Claimant continued to treat with Dr. R. Dr. G saw claimant again on January 25, 1993, and notes claimant's "degenerative arthritis . . . continues to progress" and recommended surgery. On February 3, 1993, Dr. G stated "[i]t is my professional opinion that her previous job that required a great deal of repetitive work with both hands aggravated but was not the cause of the preexisting and ongoing problem of degenerative arthritis." Dr. G then goes on, in the same statement to say "[i]t is my opinion that the surgical treatment of her degenerative arthritis at this point should not be covered by workers' compensation." Dr. G completed an updated Report of Medical Evaluation (TWCC-69) certifying MMI on 8/14/92 with a three percent impairment rating and references "[s]ee attached report - 8/14/92." In the exhibits forwarded for review, no narrative report dated 8/14/92 was attached and we conclude, as did the parties at the CCH, that Dr. G was probably referring to his chart note of 8/14/92, where he states, "[u]sing [county's] definition, I believe that this patient probably has reached MMI with respect to the injury of _____." The following day, February 4, 1992, claimant had surgery, apparently, although not clear, by Dr. G.

Claimant had some post surgical care by Dr. G and physical therapy, in March 1993. On April 29, 1993, claimant was examined by the Texas Workers' Compensation Commission's (Commission's) designated doctor, (Dr. T). Dr. T completed a TWCC-69 certifying MMI on August 14, 1992, with a four percent whole person impairment rating. It is the accompanying narrative that has created much of the confusion. Dr. T, by report dated April 30, 1993, states:

> In reviewing the records, I do not feel that this patient's disease process of osteoarthritis arose out of her employment. It did not originate as a result of her repetitive trauma at work. The condition was aggravated by repetitive trauma. She still complains of problems with performing repetitive type of

> tasks. I have told the patient that she will always have problems with a repetitive type of tasks. Her work did not cause the condition.
>
> This patient was followed for over a year before she had surgery. She continued to have a progression of her symptoms in spite of conservative medical treatment. She continued to have a progression of her symptoms in spite of the fact that she was not working as a tax assessor. I, therefore, do not believe that her condition was caused by or aggravated to the point of requiring the surgery. I believe the patient's condition is aggravated by repetitive type of work, but I do not feel that her work created a situation requiring surgery.

The hearing officer quotes Dr. T as follows:

> . . . this patient's disease process of osteoarthritis arose out of her employment. It did originate as a result of her repetitive trauma at work. The condition was aggravated by repetitive trauma. She still complains of problems with performing repetitive type of task. I have told the patient that she will always have problems with repetitive type of task. Her work did not cause the condition . . . . I, therefore, do not believe that her condition was caused by or aggravated to the point of requiring the surgery. I believe the patient's condition is aggravated by repetitive type of work, but I do not feel that her work created a situation requiring surgery.

It is clear that Dr. T was misquoted; first when the hearing officer omitted the phrase "I do not feel that. . ." at the beginning of his quote and by omitting the work "not" in the second sentence of his quote. These omissions completely change the meaning of those sentences.

The hearing officer found that claimant suffered repetitive motion trauma to her hands and wrists; the repetitive motion trauma suffered by claimant aggravated her preexisting condition of osteoarthritis and that claimant reached MMI on August 14, 1992, with a four percent whole person impairment rating. The Hearing Officer then concluded that claimant suffered a compensable injury in the course and scope of her employment. The county objects in general to the findings that claimant suffered a repetitive trauma injury and more specifically contends that "the Hearing officer abused his discretion in misquoting the designated doctor." The county states "[t]his is an egregious error on behalf of the Hearing Officer." We absolutely agree. We can not explain how or why the hearing officer misquoted the designated doctor twice. Perhaps one error could have been a typographical error or failure to proof read the quote, but twice is inexplicable. Although the error was egregious, should not have occurred and gives a perception that the hearing officer was either biased or inattentive to detail, the fact remains that Dr. T was saying

there was aggravation of a preexisting condition and therefore the misquote is harmless error in that the error was not reasonably calculated to cause and probably did not cause rendition of an improper decision *See* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. App.-San Antonio 1981, no writ).

The county argues because the hearing officer misquoted the designated doctor, "he seriously misconstrued the evidence." The county further points out that the hearing officer must have given credit to the statements of both Dr. G and Dr. T on causation because the date the hearing officer found claimant reached MMI "is prior to the date of the surgery, so that if the surgery was related to the injury, then she obviously could not have reached [MMI] prior to the surgery." We concede some confusion may exist when a designated doctor and treating doctor certify MMI before the claimant is scheduled to undergo surgery and will address this later.

It is not disputed, and claimant does not contend, that her osteoarthritis was caused by her work. The osteoarthritis would be a preexisting condition. The crux of claimant's contentions, as we understand them, is that she suffered a "repetitive motion injury" (claimant's testimony, page 3, Cla Ex 11). Claimant contends, and the hearing officer found, that the repetitive motion injury aggravated claimant's preexistent osteoarthritis. This contention is supported by Dr. R in his report of October 28, 1991, to county's adjustor where he states claimant ". . . does in fact have osteoarthritis . . . which contributes to her disability, but this can be aggravated by repetitive on the job activity." Dr. R concludes ". . . this problem can be aggravated by abusive activity." Dr. G in essence, does not disagree with claimant's contention. In his report of May 8, 1992, Dr. G states "[C]laimant's condition was not caused by her previous job, but probably was aggravated by the activities of that job." Dr. G in his February 3, 1993, statement also supports claimant's contention by saying "[i]t is my professional opinion that her previous job that required a great deal of repetitive work with both hands aggravated but was not the cause of the preexisting and ongoing problem of degenerative arthritis." Dr. T's misquoted opinion of April 30, 1992, although confusing, can be read to support claimant's theory where he clearly states the osteoarthritis "did not originate as a result of her repetitive trauma at work. The condition was aggravated by repetitive trauma." Dr. T emphasizes "[h]er work did not cause the condition." (Presumably meaning the osteoarthritis.) Claimant, as we understand it, is not claiming the osteoarthritis resulted from work, but only that the osteoarthritis was aggravated by repetitive trauma at work. Dr. T goes on in his report to say "I believe the patient's condition is aggravated by repetitive type of work, but I do not feel that her work created a situation requiring surgery . . . . I have told the patient that I believe her condition will be aggravated by repetitive type of trauma and work." Only Dr. V in his report of January 9, 1992, based solely on a review of the records states ". . . it does not appear to this reviewer that the job activities aggravated a condition of osteoarthritis since there was no evidence that she indeed had osteoarthritis." The doctors appear to be saying the preexisting osteoarthritis would require surgery but that surgery was not necessitated by

the repetitive motion aggravation.

There is abundant authority that an aggravation of a preexisting condition is an injury in its own right and can be compensable. Texas Workers' Compensation Commission Appeal No. 92463, decided October 18, 1992; Texas Workers' Compensation Commission Appeal No. 91094, decided January 17, 1992. Texas Workers Compensation Commission Appeal No. 93478, decided July 29, 1993. Further, under the applicable case law, an injury may include an aggravation of a preexisting condition, whether or not that condition was job related. Gulf Insurance Co. v. Gibbs, 534 S.W.2d 720 (Tex. Civ. App.-Houston [1st Dist.] 1976, writ ref'd n.r.e.). In the instant case, the hearing officer found that claimant suffered repetitive motion trauma to her hands and wrists as a result of her work and that the repetitive motion trauma aggravated her preexisting condition of osteoarthritis. Despite misquoting the designated doctor there is sufficient evidence to support those findings in claimant's testimony, Drs. R's, G's and T's reports noted above.

We interpret Dr. T's comments about surgery as meaning that he does not believe the aggravation required surgery although he apparently believed the aggravation was caused by repetitive type work. Similarly Dr. G, in his statement of February 3, 1993, states "[i]t is my opinion that the surgical treatment of [claimant's] degenerative arthritis at this point should not be covered by workers' compensation." We note in passing that Dr. G is expressing a legal conclusion rather than a medical opinion, but nonetheless seems to be saying that the preexisting condition, osteoarthritis, might require surgery (which apparently he performed the next day) but that the aggravation itself was not the cause for the surgery. Dr. G does not say there was no aggravation. In sum, we do not find merit in the county's allegations and find sufficient evidence to support the hearing officer's determination, notwithstanding the fact the hearing officer misquoted the designated doctor.

Regarding the issues of MMI and impairment, we note that Dr. R has not given an opinion on MMI or an impairment rating. Dr. G, who was initially the county's doctor certified MMI on 8-14-92 with a three percent impairment and Dr. T the designated doctor certified MMI on 8-14-92, with four percent impairment. Article 8308-4.25(b) and 4.26(g) give presumptive weight to the designated doctor's report and that presumptive weight can only be overcome by the great weight of medical evidence to the contrary. We do not understand the county's appeal to be based on the fact that Dr. V's report constitutes the great weight of medical evidence contrary to the designated doctor's report, but rather that MMI was certified by both Drs. G and T as being ". . . prior to the date of surgery, so that if the surgery was related to the injury, then she obviously could not have reached [MMI] prior to the surgery." We agree that appears to be confusing, however, reading all the reports as a whole, and not reading Dr. T's report as a contradiction, we believe, as apparently did the hearing officer, that the doctors are saying that claimant had a preexisting condition, osteoarthritis, which was not work related, but which was aggravated

by repetitive motion trauma, and it was the preexisting osteoarthritis which required surgery. This interpretation would make the doctors reports consistent. The hearing officer's decision under those circumstances would not be against the great weight and preponderance of the evidence as the county alleges. We disagree with the county that had the misquoted doctor's report been quoted properly it would support a contrary decision. The reports must be read and construed in their entirety and accorded a reasonable probable meaning. Drs. G and T are clear that claimant had a non-work related preexisting osteoarthritic condition which was aggravated by repetitive motion trauma. The aggravating repetitive motion trauma would be compensable, as found by the hearing officer, culminating in an MMI on August 14, 1992 with four percent impairment.

We find that the hearing officer's decision is supported by sufficient evidence. Where, as here, there is sufficient evidence to support his determinations, there is no sound basis to disturb his decision. Only if we were to determine, which we do not in this case, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust would be warranted in setting aside his decision. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers' Compensation Commission Appeal No. 92232, decide July 20, 1992.

The decision is affirmed.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Gary L. Kilgore
Appeals Judge