APPEAL NO. 93592

This 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 25, 1993, a contested case hearing was held in (city), Texas, (hearing officer) presiding, to determine whether the respondent's (claimant) heart and/or carpal tunnel problems are related to her compensable injury of (date of injury), and, if so, whether the claimant has had disability as a result of the heart and/or carpal tunnel problems, and the duration thereof. The record was closed on June 6, 1993. The hearing officer concluded that claimant was injured in the course and scope of her employment with the appellant [employer] on (date of injury), and that she has had disability from that date to the date of the hearing. Employer's request for review challenges the sufficiency of the evidence to support the pertinent findings and conclusions while the claimant's response urges our affirmance.

DECISION

Finding the evidence sufficient to support the challenged findings and conclusions, we affirm.

Claimant testified that she had worked for 18 years as a meat cook at one of Employer's elementary schools when, on (date of injury), she received an electrical shock from a bread warmer. On that day, claimant approached the bread warmer with a pot of water to clean it and when she touched the warmer her arms were "sucked inside." Her next recollection was laying on the floor screaming and asking a coworker whether she was alive. She was taken to a hospital emergency room by one of her daughters who was called to the school. Claimant said she had never missed work due to illness and in fact had received annual perfect attendance awards except for years she missed work due to family deaths. She stated she had only been hospitalized for child births, the last being 25 years earlier. Claimant also said that her duties as a meat cook involved such lifting as 50 pound boxes of chicken and the cutting of meat with an electric cutter.

The carrier introduced the written statement of (Ms. H), Employer's health services director, which stated that in the early fall of 1991 she held a meeting with claimant in attendance to discuss claimant's high blood pressure and to advise claimant to seek medical assistance since she understood claimant had a history of hypertension and had at some point taken medication for such. The statement of (Ms. GH) indicated she was the Employer's food services supervisor, that in the fall of 1991 she received a call from the school where claimant worked advising that claimant had seen the school nurse, that claimant's blood pressure was high, and that this call led to the meeting with Ms. H. Claimant testified that prior to the date of her accident she had never been told by a doctor that she had high blood pressure or been treated for such, and that if her blood pressure had been as high before her injury as it was afterwards, she could not have done her job. She denied that her blood pressure had been taken at the school, as asserted in Ms. GH's statement, but did concede she attended the meeting with Ms. H out of fear she would lose her job.

Two of claimant's daughters appeared and their testimony respecting their knowledge of claimant's health history prior to the accident largely corroborated claimant's testimony. Notwithstanding that there was no disputed issue respecting mental trauma, these witnesses testified at length to their observations concerning what they described as their mother's depression since her accident including her withdrawal, reduced activity level, loss of interest in personal appearance, and sleeplessness. This depression was attributed by claimant's daughter to the trauma of her electrical shock and to the subsequent problems their mother encountered in what was described as Employer's repeated failure to either pay or timely pay claimant's medical bills. One of the daughters, (Ms. LP), testified that she had driven her mother to the emergency room after the accident, that it was she who had provided her mother's medical history in response to questions, and that she had mentioned a family history of high blood pressure. She also testified that aside from occasional headaches and colds, she had never known her mother to be ill, to complain of or be treated for high blood pressure, or to take medications other than aspirin.

In his notes of (date of injury), claimant's treating doctor, (Dr. S), whose specialties are cardiology and internal medicine, stated that claimant, then age 55, came to the hospital emergency room (ER) and was admitted. These notes stated that claimant did not lose consciousness or have seizure activity when she received the electrical shock but did complain of mild chest pain that lasted for a few minutes. He also stated: "Patient has a long standing history of hypertension at least for the past 30 years. She stopped taking medication for the control of hypertension about 2 years ago." Upon physical exam, Dr. S found claimant to be "markedly obese" and her blood pressure at 220/100. Dr. S's impression included electrical injury of the chest wall, rule out electrical injury to the heart, hypertension, obesity, and pedal edema. In a letter to employer's adjuster dated February 26, 1993, Dr. S indicated that the electrical shock entered claimant's left arm and continued through her chest and all the way through her right arm. While in the hospital claimant was evaluated by a neurologist, (Dr. K), and an EMG and nerve conduction study revealed bilateral carpal tunnel syndrome (CTS), "severe in degree, left worse than right." Dr. S stated that claimant was treated in the hospital for hypertension and subsequently followed in his office for control of hypertension. When claimant was admitted to a hospital on December 12, 1991, for intestinal bleeding, her blood pressure was 170/115. Dr. S included hypertension and bilateral CTS in his final diagnoses.

In his May 21, 1993, deposition, Dr. S testified that on (date of injury), he diagnosed claimant with electrical injury to the left upper arm, hypertension, and hypercholesterolemia. He also said he diagnosed supraventricular tachycardia which he described as a disturbance of the heart rate or sudden fluttering of the heart causing an anxiety reaction; that claimant's episode of hypertension was caused by a severe anxiety reaction from which she has suffered since the electrical shock; that the electrical shock caused or contributed to claimant's hypertension via the severe anxiety reaction; that claimant has had symptoms

of weakness of hand grip in both hands and pain in both upper arms since the electrical shock; that the specific injuries claimant suffered as a result of the shock were anxiety reaction resulting in supraventricular tachycardia and hypertension, and the worsening of symptoms of CTS. Dr. S also stated that claimant said she had had hypertension in the past which subsided after treatment and the medications were discontinued. Dr. S opined that claimant would be unable to return to work because of significant impairment of function in both hands due to severe CTS.

An October 29, 1992, report to carrier from (Dr. H), a neurologist, reflected that he examined claimant on October 15th and noted medical history conflicts apparently including whether or not claimant had been treated for hypertension during the two years preceding her electrical shock. Dr. H's impression included: 1) Depression, severe, post-traumatic; 2) history of electrical shock with questionable loss of consciousness; 3) dysethesias, both upper extremities, post-electrical shock, probable conversion disorder; 4) essential hypertension. Dr. H commented as follows:

> It is my opinion that the patient's current symptomatology are directly related to her shock injury of (date). It is further my impression that many of her neurologic symptoms, if not all, are the consequence of an emotional over-reaction. She has what appears to be a major depression. I do not believe she would benefit from surgery on the medial or ulnar nerves. It is unlikely that she will achieve symptom relief to return to work. Intensive psychiatric treatment of her depression is recommended.

A report of December 4, 1992, from (Dr. E), a hand surgeon, stated that he examined claimant on December 2nd at the carrier's request to determine if claimant has bilateral CTS and, if so, whether it is related to her electrical shock injury. Dr. E stated he did not know if claimant had bilateral CTS based on his clinical examination and felt that electrodiagnostic testing would be necessary to help answer the question. Dr. E said he agreed with many of the observations in Dr. H's report as well as with his recommendation.

In his deposition of May 12, 1993, Dr. E testified that he was unable to make an accurate diagnosis of claimant's condition, and that electrodiagnostic studies would be required to objectively determine whether claimant had CTS. In Dr. E's opinion, the electrical shock did not cause, contribute, or relate to claimant's bilateral CTS. Dr. E also said that while claimant's CTS related complaints of weakness and a burning sensation in her hands would not preclude her from working, there were "other things that [he] noted on a physical examination that would most likely preclude her working at this period of time," including her depression; slow gait; depressed, flat affect; reluctance to get up and down from the chair; and tremors and inability to move the upper extremities.

In a May 21, 1993, report to the carrier, (Dr. M), a neurologist, stated that he had

reviewed claimant's records sent by the carrier and that while CTS can occur in response to trauma, it certainly would not occur 24 hours after a trauma. Dr. M did not comment on whether the electric shock may have aggravated pre-existing CTS. He also strongly doubted that claimant's hypertension was due to the electrical shock.

The hearing officer found that claimant's present severe hypertension was either caused or aggravated by the electrical shock she received on (date of injury), that her present supraventricular tachycardia resulted from the shock, that her bilateral CTS was either caused or aggravated by the shock, and that her CTS has rendered her unable to obtain or retain employment at her preinjury wages. The hearing officer commented that she found persuasive the evidence which linked the electrical shock to claimant's hypertension either as the sole cause or an aggravating cause, and that the evidence also established a causal link to claimant's supraventricular tachycardia, either directly or as result of the hypertension. Similarly, the hearing officer found that the evidence supported both the diagnosis of CTS and its causal connection to the electrical shock. The hearing officer further viewed the evidence as undisputed that claimant has continuing disability as that term is defined by Article 8308-1.03(16).

Claimant had the burden to prove by a preponderance of the evidence that her heart and/or CTS problems were related to the undisputed electrical shock she suffered at work on (date of injury), and that she had disability under the 1989 Act as a result of her compensable injury. Carrier contended that claimant's hypertension was pre-existing and certainly the evidence was in apparent conflict in that regard. However, we have previously observed that a compensable injury under the 1989 Act includes an aggravation of a pre-existing condition, whether or not such condition was work related, and that to defeat a claim for compensation because of such a pre-existing condition, the carrier must show the pre-existing condition was the sole cause of the claimant's present incapacity. *See e.g.* Texas Workers' Compensation Commission Appeal No. 92216, decided July 10, 1992.

As the trier of fact in a contested case hearing, the hearing officer is the sole judge not only of the materiality and relevance of the evidence but also of its weight and credibility. Article 8308-6.34(e). The hearing officer resolves 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 officer also judges the weight to be given expert medical testimony and resolves conflicts and inconsistencies in the testimony of expert medical witnesses. Texas Employers Insurance Association v. Campos, 666 S.W. 2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ); Atkinson v. United States Fidelity Guaranty Co., 235 S.W.2d 509 (Tex. Civ. App.-San Antonio 1950, writ ref'd n.r.e.); Highlands Underwriters Ins. Co. v. Carabajal, 503 S.W.2d 336, 339 (Tex. Civ. App.-Corpus Christi 1973, no writ).

It is apparent the hearing officer credited the medical evidence of Dr. S which linked

claimant's electrical shock to the aggravation of her CTS, diagnosed by Dr. K while she was in the hospital, to the aggravation of her hypertension, and to her supraventricular tachycardia. *See* Houston Independent School District v. Harrison, 744 S.W.2d 298 (Tex. App.-Houston [1st Dist] 1987, no writ) where a school cafeteria worker received an electrical shock and was diagnosed as having hypertension, accidental electric shock, CTS, and asymmetric septal hypertrophy, and the court determined that expert medical evidence was not required. The carrier contends that Dr. E's opinion respecting the linkage of the electrical shock to claimant's CTS deserves more weight because he is a hand surgeon while Dr. S is a cardiologist. However, Dr. E said he was unable to diagnose CTS without further electrodiagnostic testing, notwithstanding the test results and opinion of Dr. K that claimant had severe CTS. The conflicting medical opinions were a matter for the hearing officer to resolve and we will not disturb the hearing officer's findings unless they are so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 751 S.W.2d 629 (Tex. 1986).

The decision of the hearing officer is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Joe Sebesta
Appeals Judge