

## APPEAL NO. 93627

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001, *et. seq* (1989 Act). On May 27, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding. The issues presented and agreed upon at the CCH were:

a.with respect to Docket No. SA/92-119183/02-CC-AU41:

(1)is the Claimant's current blood-pressure problem a result of an injury in the course and scope of employment on (date of injury); and,

b.with respect to Docket No. SA/92-066726/01-CC-AU41:

(1)is the Claimant's current blood-pressure problem a result of an injury in the course and scope of employment on (date of injury).

During the hearing it was agreed that the issues would be consolidated in essence to be whether claimant's "current blood-pressure problem" was a result of an injury in the course and scope of employment on (date of injury). The hearing officer determined that claimant's "self-perceived blood-pressure problem was not a result of an injury in the course and scope of employment on (date of injury)."

Appellant, claimant herein, contends that the hearing officer erred by misinterpreting claimant's medical evidence, that his current problems are due to work related heat strokes and that he should at least be awarded medical benefits. Respondent, carrier herein, responds that claimant's appeal was not timely filed or in the alternative that the decision is supported by the evidence and requests that we affirm the decision.

## DECISION

The decision of the hearing officer is affirmed.

Claimant's appeal was timely filed. The file before us contains a statement dated July 13, 1993, from a Texas Workers' Compensation Commission administrative technician in the ombudsman's office that on July 13, 1993, claimant came to the office of the ombudsman to inquire about the decision in his case as he had never received a copy by mail. Claimant was provided a copy of the decision on July 13, 1993, and the appeal was filed within 15 days of July 13th, the date claimant received the hearing officer's decision, in accordance with TEX. LAB. CODE ANN. § 410.202.

Claimant testified that he began work for the employer, an amusement park, on February 10, 1992, as a game operator. Claimant testified he had been exposed to the heat in June and early July 1992. (All dates are 1992 unless otherwise noted). Claimant

stated that on July 4th, the weather was very hot and humid and he was working in his assigned booth, managing the game and selling tickets. He testified he felt ill, lost his energy and went to the first aid area where he received treatment for heat exhaustion. Claimant was subsequently taken to a local hospital emergency room (ER). Claimant testified he was off work one day and then returned to work in an air-conditioned area. Claimant stated he continued to have problems.

A note from (Dr. K), dated July 6th, states that claimant had a heat stroke on July 4th, and that he needs to confine his work activities to an air conditioned environment and "a sitting down position. . . ." An Initial Medical Report (TWCC-61) from Dr. K dated August 19th, indicates claimant "developed heat exhaustion due to working all day in the hot sun." Dr. K in that report goes on to say that the ER ". . .diagnosed (claimant) with having cardiac arrest due to heat exhaustion." A follow-up showed claimant "doing much better."

Claimant was apparently hospitalized on August 21st ". . .following an episode of hypotension and bradycardia suffered in the outpatient exercise treadmill laboratory." Claimant was seen by (Dr. G) who apparently had been following claimant since August 17th. Dr. G's assessment (apparently on or about August 25th) was: 1) Orthostasis of uncertain etiology; and 2) Chronic chest pain syndrome. Dr. G records that claimant had "suffered a mild infarction previously, prognostically he should do exceedingly well given his insignificant coronary disease by previous angiography."

Claimant had a neurological consultation by (Dr. SH) on August 31st on a referral from Dr. G. The history references "a small myocardial infarct" in April of 1992. Although claimant had a number of complaints regarding lightheadedness and blacking out including an episode when he had a CT of the chest, none appeared work related. There is a reference ". . .that he has had . . .a low blood pressure." Dr. SH's findings are:

#### IMPRESSION:

- 1.Episodes of near syncope and most syncopal spells secondary to orthostatic hypotension from peripheral and autonomic neuropathy secondary to diabetes. No evidence for any seizures or TIAs.
- 2.Episode of brief blacking out occurring during CT scan of the chest, most likely related to vasovagal type changes and decrease in blood pressure, not anything to suggest seizure-like activity or TIAs.
- 3.Diabetes mellitus.
- 4.Chest pains, questionable etiology.

## RECOMMENDATIONS:

1. Do not feel further neuro workup indicated. If orthostatic hypotension worsens, treat with mineral corticoid or with Indocin.
2. Will be happy to reevaluate anytime in the future.

Claimant apparently had another brief hospital admission on "9/8/92" for an episode of hypotension and bradycardia. The hospital records note that a history taken by (Dr. SC) recorded ". . . a heat stroke during mid-July and perhaps this has played a role in the development of autonomic dysfunction." The "final diagnoses" were: 1. Severe orthostasis; 2. Persistent sinus bradycardia; 3. Chronic chest syndrome; 4. Newly diagnosed diabetes mellitus; and, 5. Mediastinal lymphadenopathy. The record states: "Of note, the development of orthostasis is of uncertain etiology in this patient." The hospital discharge summary had an addendum signed by Dr. G noting that claimant ". . . did FEIGN (handwritten in capital letters by the doctor) relative losses of responsiveness to verbal command or sternal rub."

In an October 15th report Dr. G noted claimant has suffered the occurrence of profound orthostasis since summer 1992 and "[t]his orthostasis may be related to an autonomic dysfunction, perhaps as a consequence of a July 1992 heat stroke or diabetes." Dr. G released claimant to "gainful employment" noting only that:

However, given the patient's significant orthostasis he is not felt fit to perform tasks requiring prolonged standing or heavy weight bearing. Preferably, his job would allow sitting during the performance of any task. The avoidance of heat exposure and thereby sweating would also be desirable as the patient's blood pressure is volume sensitive.

Dr. G, in a report dated "3/15/93," noted "evaluation by an outside physician." Of concern in that report is the sentence "[h]e (the evaluating physician) does believe that the patient's orthostasis is attributable to this administration of epinephrine or his infarct." This sentence contains a space where it appears a word has been "whited out." Otherwise Dr. G gives an assessment of "1. Status post non-Q myocardial infarct 4/26/92; 2. Orthostasis, possibly related to autonomic dysfunction or neuropathy; 3. Diabetes mellitus, now controlled by diet." Dr. G notes that the second opinion obtained during claimant's September 1992 admission for symptomatic orthostasis did suggest the "possible correlation of the patient's heat stroke and subsequent development of autonomic dysfunction/orthostasis." Dr. G states that it is conceivable that claimant suffered his orthostasis process following a heat stroke while on the job.

It is noted that nowhere in the reports is "blood-pressure problem" equated with

orthostasis, however, it also appears that the medical evidence was conflicting as to whether the heat stroke caused the orthostasis. Of further note, the hearing officer, both in his statement of the evidence and a finding of fact, states claimant's testimony was "vague and elusive."

The hearing officer found that claimant had exaggerated his symptoms, that there was no relationship between claimant's alleged "current blood-pressure problem" and his heat stroke on July 4th, that the medical evidence indicates that claimant had no real blood pressure problem and that there was no relationship between "claimant's self-perceived problem of blood pressure" and the heat stroke of July 4th. The hearing officer concluded that claimant's self-perceived blood-pressure problem was not a result of an injury in the course and scope of employment on July 4th, and is therefore not entitled to workers' compensation benefits.

Claimant appeals, contending his cardiologist, Dr. G, stated his current problem is with his orthostasis, which was related to his heat exhaustion of "(date)" and July 4th. Claimant contends the reason the hearing officer found him to be "vague and ambiguous is probably due to my ignorance in the medical field not being able to relate my condition as to how is (sic) was related to my on-the-job injury." Claimant argues that his "heat strokes on (date), and (date of injury), played a significant role in my blood pressure condition." Claimant then cites portions of Dr. G's reports that he believes are favorable to him. Claimant, in the appeal, clearly equates orthostasis as being his "current blood-pressure problem."

As the outset we point out that the hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given the evidence. Section 410.165(a). The hearing officer had the opportunity to hear the witnesses and observe their demeanor. Obviously the hearing officer did not give great credibility to the testimony of the claimant. The hearing officer is free to reject the claimant's testimony, when the testimony is not so clear, direct, and not lacking in circumstances tending to discredit it. Presley v. Royal Indemnity Insurance Company, 557 S.W.2d 611, 613 (Tex. Civ. App.-Texarkana 1977, no writ). Texas Workers' Compensation Commission Appeal No. 93388, decided June 28, 1993.

Several of the medical reports indicate the orthostasis as being of an unknown or uncertain etiology, and even Dr. G's final report of March 15, 1993, on which claimant relies heavily, only states that claimant's symptomatic orthostasis suggests "possible correlation of the patient's heat stroke and subsequent . . . orthostasis" and that "it is conceivable" that claimant suffered his orthostatic process following a heat stroke. In the present case the claimant disagrees with the reading of the medical evidence by the hearing officer and how the hearing officer chose to weigh the medical evidence. These are, however, matters within the province of the hearing officer as the trier of fact. The hearing officer also judges

the weight to be given expert medical testimony and resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given expert medical testimony. 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.); Texas Workers' Compensation Commission Appeal No. 93592, decided August 30, 1993. It is apparent the hearing officer did not find causation between claimant's heat stroke on July 4th and the existence of a blood pressure problem. There is sufficient evidence to support the hearing officer's decision.

When reviewing cases based on sufficiency of the evidence, as we do here, the decision of the hearing officer will be upheld unless we determine, which we do not in this case, that the evidence is so weak or that the findings are so against the great weight and preponderance of the evidence as to be manifestly erroneous or unjust. INA of Texas v. Howeth, 755 S.W.2d 534 (Tex. App.-Houston [1st Dist.] 1988, no writ); In re King's Estate, 244 S.W.2d 660 (Tex. 1951).

Accordingly, the decision of the hearing officer is affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

## CONCURRING OPINION:

I do not believe that the evidence supports the hearing officer's finding of fact that the claimant "had no real blood pressure problem," as at least one doctor's report refers to claimant's orthostatic hypotension. I also think the issues in this case could have been more precisely phrased; rather than whether claimant's "current blood-pressure problem" resulted from a compensable injury, the real issue appeared to be whether the physical problems claimant was suffering, including faintness and dizziness when standing, were causally related to the heat-related episodes he suffered at work. I agree with the majority, however, that the evidence supports the hearing officer's determination that no such causation was established.

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Lynda H. Nesenholtz  
Appeals Judge