

APPEAL NO. 93664

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. 401.001, *et seq.* ((year) Act). On July 6, 1993, a contested case hearing was held in (city), Texas with (hearing officer) presiding. The issues presented and agreed upon were: "Whether Claimant's psychiatric problem is related to her injury of (date of injury); Whether maximum medical improvement (MMI) has been reached and, if so, what date; and, What is claimant's whole body impairment rating?" The hearing officer determined that the claimant "has a psychiatric problem that is related to her work-related accident of (date of injury), that claimant has not reached [MMI]" and that the designated doctor's report is contrary to the great weight of other medical evidence.

Appellant, (city) Independent School District, a self-insured governmental entity, carrier herein, contends that the hearing officer erred in finding the designated doctor had not considered claimant's mental injury, that the designated doctor's report is entitled to presumptive weight which has not been overcome by the great weight of medical evidence to the contrary, that claimant has reached MMI and requests that we reverse the hearing officer's decision and render a decision in its favor. Respondent, claimant herein, responds 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 testified she was a school nurse who had been employed by carrier's schools for 32 years. She stated on (date of injury), while assisting in controlling a student suffering from grand mal seizures she "felt a snap in her back" and sustained back and neck injuries. Claimant states she reported the injury to the school secretary the next day, and subsequently saw a doctor for the first time (for this injury) on October 30, 1991. The first doctor claimant saw was (Dr. M), M.D., an orthopedic surgeon, who is the treating doctor. Dr. M referred claimant to (Dr. C), M.D., a neurologist. Dr. C subsequently referred claimant to (Dr. D), D.O., a psychiatrist who is the treating psychiatrist. While claimant was hospitalized for depression from September 29, 1992, to November 8, 1992, she was seen by (Dr. I), a PhD. behavioral psychologist. Eventually at a benefit review conference (BRC) on January 12, 1993, claimant agreed to be seen by a psychiatrist selected by the carrier. Carrier selected (Dr. G), M.D. Carrier also had claimant examined by (Dr. Ca), M.D., an orthopedic surgeon for evaluation of claimant's neck and back problems. The hospital records also contain a hospital note by (Dr. Du), M.D., whose specialty is uncertain but who is possibly a psychiatrist. Eventually at the request of carrier, the Texas Workers' Compensation Commission (Commission) selected a designated doctor. The Commission selected designated doctor was (Dr. W), M.D., an orthopedic surgeon. Claimant had also apparently sustained an injury in (year) which had resulted in some depression.

Basically, claimant admits to a (year) injury which resulted in some depression, and for which she was still taking medication. However, claimant stated, and is supported by the record, that she had returned to full-time regular duties when the incident of (date of injury), occurred. Claimant testified that her injuries from the October incident caused a change in her life and a subsequent serious debilitating depression. Claimant's position, as summed up by the hearing officer, is that the physical injuries that she suffered prevented her from doing her job and the fact she is unable to do her job has caused her depression.

Dr. M, the treating orthopedic physician initially treated claimant's neck and back problems conservatively and recommended (report of 3/16/92) "ongoing physical therapy." By letter dated September 16, 1992, Dr. M stated "I had not fully released this patient whatsoever." In a follow-up examination dated 11/18/92, Dr. M stated:

This patient has rather significant secondary depression as well as her physical medical problems are inter related and intertwined. Unfortunately it is very difficult to separate physical impairments from emotional impairments in this situation. Basically this patient does have some residual impairment as well.

Dr. M concluded ". . . this patient is not fit or able to go back to work."

In a letter dated August 12, 1992, Dr. C, the neurologist, refers claimant to Dr. D stating that claimant's symptoms are "obviously chronic and she has had some episodic depression throughout, but it appears to be getting worse."

Claimant testified she saw Dr. D, a psychiatrist, on September 17, 1992, and continued to see him every three days until she was hospitalized in a psychiatric ward from September 29 to November 8, 1992. During this time she was under the care of Dr. D who requested an evaluation by Dr. I, a behavioral psychologist. Dr. I conducted a comprehensive evaluation and by report dated 10/02/92 gave a diagnostic impression using the American Psychiatric Association Diagnostic and Statistical Manual on Mental Disorders, (DSM-III-R) as:

AxisI Clinical Syndrome:1.Psychotic disorder, NOS (atypical psychosis) (298.90).

2.Generalized anxiety disorder.

AxisII Personality Disorders:1.Schizotypal personality disorder (301.22).

2.(301.82) Avoidance personality disorder with permanent borderline personality traits (rule out).

AxisIII Physical Disorders:Neck and back pain.

AxisIV Severity of Psychosocial Stressors:Extreme

AxisV GAF:30.

PROGNOSIS: The patient's prognosis is guarded.

In a subsequent report Dr. I recounted claimant's history as:

The patient apparently suffered an on-the-job injury and subsequent depression developed, which became exacerbating (sic) because of her pain in her neck and back. The patient eventually developed into a full blown major depression with psychotic features. Records show that the patient's condition worsened and she began verbalizing feelings of hopelessness, helplessness, and suicidal ideation. She was subsequently admitted to St. Paul Medical Center on 09/28/92.

Dr. D in a January 11, 1993, report states:

I was asked to render an opinion as to whether [claimant's] condition was caused by an on-the-job accident. The final diagnosis on [claimant], is Delusional Disorder Persecutory Type, this condition has biological and environmental causes. It is my professional opinion that the accident on the job, with the resulting stress of the constant acute to chronic pain, her feeling of no one cares due to conflict with the insurance carrier, her thought that I have opened the school for the last 31 years and now I just can't do it. I have no purpose in life and no reason to live, is the environmental cause of the illness.

Claimant was seen by Dr. Ca, at carrier's request, for an evaluation of her neck and back pain. By a Report of Medical Evaluation (TWCC-69) dated 8-18-92, Dr. Ca certifies MMI on 8-18-92 with 0% impairment. Dr. Ca's examination and evaluation is clearly limited to claimant's orthopedic problems. Dr. Ca does not mention claimant's mental condition.

The Commission designated Dr. W as a designated doctor to evaluate claimant. By TWCC-69 and report dated 12-15-92, Dr. W certified MMI on 12-15-92 with 9% whole body impairment. Dr. W states he has reviewed Dr. Ca's evaluation and Dr. M's records regarding claimant's orthopedic problems. No mention is made of Dr. I's evaluation or claimant's hospitalization for depression. Dr. W indicates he used the "(year) AMA Guidelines, Table 49, IIB, cervical spine," portion of the guides in arriving at the 9% impairment rating. Dr. W does record a "History of depression" and states:

Prognosis is guarded because of the continuing complaints but more importantly the depression apparently has had a significant impact as far as the patient being able to return to work.

At the January 12, 1993, BRC, in a BRC agreement claimant "agrees to see a psychologist/ psychiatrist for evaluation of problem and its relationship to her injury. The doctor will also be asked to give an opinion on [MMI] & impairment for the psychological problems." Pursuant to that agreement claimant was seen and examined by Dr. G. Dr. G in a TWCC-69 and brief half-page report dated April 7, 1993, certified MMI on (date), with 0% impairment. Dr. G states:

. . . it is my opinion that [claimant] is not disabled from a psychiatric illness. She is deliberately and intentionally faking. She has no psychiatric illness related to her injury of (date). She reached maximum medical improvement from the psychiatric stand point on (date). Her problem is not workmen's compensation related.

Dr. G does not record any testing or reasoning how he arrived at his conclusion other than to state ". . . able to turn tears on and off, faking hallucinations, faking memory impairment."

Dr. G's report was given to Dr. I and Dr. D for comment. Dr. D, by letter of June 17, 1993, states:

Based on 8 months of treatment, either, weekly or daily, psychological testing, psychiatric evaluation, today, and original psychiatric evaluation, review of the hospitalization, nurses notes, the treatment team evaluation and progress, laboratory findings, x-rays, and interviews with various psychologists I can see no reason whatsoever to change my original opinion.

Dr. I is even more emphatic in a report dated June 4, 1993, when he stated:

This woman did bring in a letter to me regarding a disputed claim and a report by [Dr. G], who apparently believed this woman was deliberately and intentionally faking. I examined her and spent several hours of assessing her during the psychological testing, which included interpretation of the psychological test results and write-up, and observation of her over several days at [hospital]. This woman was in no way faking or exhibiting any malingering of any type. I have a great deal of experience in assessing malingering and faking through psychological tests, which are more sensitive toward identifying malingerers than (sic) a "one shot interview or Mental States Examination." This woman is suffering from a true mental disorder that is related to her on-the-job injury. This finding should not be so difficult to understand, since it is a well known fact that many people

react emotionally in this manner to a physical disorder.

The hearing officer found that claimant's "psychotic disorder was caused by her work related back and neck injury of (date of injury) . . ."; that Dr. W, the designated doctor, ". . . did not consider the claimant's mental injury in his determination that the Claimant had reached [MMI] and did not consider the Claimant's mental injury in arriving at his impairment rating"; that Drs. D and I, "based on extensive testing, evaluation, and treatment, have opined that the claimant has a mental injury caused by her physical injury of (date of injury), that her mental injury makes it impossible for her to work, and that the Claimant has not healed from her mental injury"; that Dr. W's report is contrary to the great weight of other medical evidence and that claimant "has not reached a point after which further material recovery from her mental injury cannot reasonably be anticipated."

Carrier contends that Dr. W did consider claimant's mental injury in making his assessment because he notes a "history of depression." Carrier argues that by mentioning the "guarded prognosis" Dr. W "clearly" considered claimant's mental condition and since the MMI certification was on 12/15/92, Dr. W "was aware of her depressive condition." The hearing officer obviously did not believe that Dr. W factored the mental condition into his rating and certainly there is nothing in the portions of the AMA Guides Dr. W cited to indicate that the mental condition was considered. Upon reviewing the records and reports, many of which are quoted above, including Dr. W's report, we find sufficient evidence to support the hearing officer finding that Dr. W did not include claimant's mental condition in his evaluation. This is supported by carrier's alternative argument on this point which is:

. . . even if [Dr. W] did not consider the Claimant's mental condition in his impairment rating, it would not have mattered since the American Medical Association Guides to the Evaluation to Permanent Impairment do not give a whole body impairment rating guide for the practitioner. [Carrier] is unaware of how [Dr. W] could have included permanent impairment due to the psychological condition into the whole body impairment rating that is found on the TWCC-69 form.

Carrier further contends that the designated doctor's report has presumptive weight which can only be overcome by the great weight of other medical evidence to the contrary, and that the hearing officer must "clearly state" why and how the contrary evidence outweighs the designated doctor's report. We have no argument with that general proposition of the law and have required the hearing officer to detail the evidence and clearly state how the great weight of the other medical evidence is contrary to the report of the designated doctor. See Texas Workers' Compensation Commission Appeal No. 93538, decided August 12, 1993; Texas Workers' Compensation Commission Appeal No. 93295, decided June 4, 1993, *et al.* We believe the hearing officer has done

so by comparing the reports of Dr. D, and Dr. I, and to some extent Dr. C, to that of Dr. W. Further a plain reading of Dr. W's report makes clear that he is emphasizing and basing his impairment assessment on an orthopedic basis, which is his specialty.

Carrier goes on to point out that Dr. M also found MMI and assigned an impairment rating but we would point out that Dr. M is also an orthopedic surgeon and further that he denies, by letter dated September 16, 1992, releasing claimant for work. It is clear that the orthopedic surgeons believe that MMI has been reached and there is some degree of impairment regarding claimant's orthopedic neck and back problem. Equally clear, to us, is that claimant's current problem is a psychiatric or mental condition, not an orthopedic problem. Of the doctors carrier lists that have found MMI (Drs. M, W, Ca and G) we note, as stated above, Drs. M, W and Ca are all orthopedic specialists and only Dr. G is a psychiatrist.

In its appeal, carrier does not greatly emphasize Dr. G's brief report and in closing argument, in reference to Dr. G's report, states "whether [Dr.G's] report is 100% accurate or not--I'm not going to go into." Consequently in comparing the reports of physicians with like specialties regarding claimant's mental and psychiatric condition it is abundantly clear that the great weight of the medical psychiatric evidence supports the hearing officer finding that claimant has not reached MMI regarding her psychiatric problems.

Carrier makes reference to the fact that Dr. D and Dr. I ". . . do not distinguish their findings from prior compensable injury that occurred in (year) from the claim currently in controversy." The Appeals Panel has, on a number of occasions, held that an aggravation of a pre-existing condition is an injury in its own right. Texas Workers' Compensation Commission Appeal No. 92463, decided October 14, 1992, citing Mountain States Mutual Casualty Co. v. Redd, 397 S.W.2d 321 (Tex. Civ. App.-Amarillo 1965, writ ref'd n.r.e.). It is undisputed that claimant was working full time at her regular duties at the time she suffered a neck and back injury on (date of injury). If in fact claimant was still under a doctor's care for some lingering effects of a prior condition, the incident of (date of injury), would certainly be a precipitating factor for claimant's current psychiatric problem. A carrier who attributes disability to a pre-existing condition has the burden of showing that such condition was the sole cause of the incapacity. Texas Workers' Compensation Commission Appeal No. 92189, decide June 25, 1992, citing Texas Employers Insurance Co. v. Page, 553 S.W.2d 98, 100 (Tex. 1977). Carrier has failed to sustain this burden, if it is carrier's position that claimant's current psychiatric condition is due to the prior (year) injury.

Finally carrier argues that "[d]octor [D and I] . . . do not address [MMI]." It appears clear from reviewing their comprehensive reports that they do not believe claimant has reached MMI. Dr. D in his January 11, 1993, report states; "[Claimant] is totally disabled from a physical and mental disorder and I expect this disability to continue indefinitely."

Dr. D affirmed that statement in his June 17, 1993, report, quoted above. Although Dr. I does not specifically address the issue of MMI in his June 4, 1993, report it is clear from the tenor of his report, quoted earlier, that he does not believe claimant to have reached MMI.

Finding no reversible error and finding sufficient evidence to support the hearing officer's decision, we affirm.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge