

APPEAL NO. 93685

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001, *et seq.* (1989 Act). On July 9, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding. The record remained open and was subsequently closed on July 12, 1993. The sole issue to be determined was: "Whether Claimant's hepatitis A & C, liver problems, kidney problems, hiatal hernia, digestive system problems, and neck problems are due to his original injury." The hearing officer determined that claimant did not have compensable neck, hiatal hernia, hepatitis A and C, liver problems, kidney problems, and digestive problems based on his work-related injury of (date of injury).

Appellant, claimant herein, appeals, disagreeing with the hearing officer's decision and reiterating some of the same evidence presented at the CCH. Respondent, carrier herein, did not file a response.

DECISION

The decision of the hearing officer is affirmed.

Claimant injured his lower back in a compensable accident on (date of injury). Since that time claimant has developed several varied medical problems. It is claimant's position that all of his medical problems are due to treatment for his work-related injury. Claimant has apparently received 104 weeks of temporary income benefits (TIBS). In support of his position, claimant submitted over 580 pages of articles, medical records, documents, reports and laboratory studies. Claimant testified that following his compensable back injury, on July 26, 1991, he was receiving a massage in a medical facility for his back injury when he felt "a severe pain" in his lower back. Claimant stated that the pain lasted only several seconds, but was so severe it required hospitalization the next day, when x-rays were taken. According to claimant, after the massage incident he developed side, chest and neck pain. He stated after receiving a facet joint injection in August 1991, he was diagnosed with hepatitis A and C. There is some evidence that claimant had hepatitis in 1990 prior to his 1991 back injury. Claimant, however, states he "was clear" of the hepatitis in August 1991. Claimant contends that his chest and neck pain were caused by lifting exercises during physical therapy; that the physical therapy caused his hiatal hernia; and that his hepatitis A and C was caused by the facet joint injections. Claimant stated that he does not know what caused his kidney and liver damage, but does contend there was "a cover up" in failing to give him an MRI or EMG studies. Claimant attributes his chest pains to his hiatal hernia and his digestive system problems to various medical treatments. Claimant was seen by a number of physicians and other health care providers.

On May 14, 1993, the Texas Workers' Compensation Commission (Commission) selected (Dr. F) as a Commission Medical Examination Order (MEO) doctor, to determine whether claimant's multiple and various medical problems ". . . resulted from his medical

treatment due to his on-the-job injury." Dr. F, in a detailed and comprehensive report, dated June 9, 1993, gave an impression:

IMPRESSION: Advanced cervical and lumbar deconditioned syndrome. Significant unresolved psychosocial factors resulting in abnormal illness behavior and adversely affecting recovery potential.

Dr. F suggested as a treatment plan:

. . . this patient should be referred to a highly structured and goal oriented functional restoration program. Such a program should be interdisciplinary in nature and use real or simulated work activities in conjunction with the necessary conditioning tasks that would be graded to progressively improve the biomechanical, neuromuscular, cardiovascular, and psychosocial functioning of the patient as an individual while addressing the important issues of productivity, safety, physical tolerance, and worker behavior. Accordingly, it is my recommendation that this patient be referred . . . for . . . evaluation of a monitored and structured functional restoration program . . .

Because Dr. F had failed to resolve the issue posed to him, the hearing officer, by letter dated July 9, 1993, went back to Dr. F with several very specific questions regarding causation of claimant's various ailments. Dr. F, in response by fax, on July 9, 1993, stated there is no evidence that would show by a reasonable medical probability that any of the medical treatment received by claimant as a result of his (date of injury), injury caused hepatitis A and C, liver problems, kidney problems, hiatal hernia or digestive system problems. We do note in another portion of his report, Dr. F, in response to the question:

1. Do you have an opinion whether the claimant's hepatitis A and C, liver problems, kidney problems, hiatal hernia, and digestive system problems were in any way related to his compensable back injury of (date of injury)?

replied: "I have no opinion."

The hearing officer, apparently based in large part on Dr. F's reports, found claimant's various problems were not compensable. Claimant appealed, largely reurging that all his medical problems were in some way or another related to his original back injury. Claimant also objects that his wife was not listed as being present "as a witness."

Regarding claimant's complaint that his wife was not listed in the hearing officer's statement of the case, we would refer to Texas Workers' Compensation Commission Appeal No. 93629, decided September 14, 1993, stating that omitting facts from a statement of evidence or discussion does not constitute reversible error. Also see Texas Workers'

Compensation Commission Appeal No. 92185, decided June 18, 1992. Further, although claimant states "she was there as a witness," we note in our review of the record that she was not called, sworn nor did she actually testify. We find no error by the hearing officer in failing to list claimant's wife in the statement of evidence.

Regarding the substance of the appeal, we note there is a voluminous amount of material in evidence, much of it inconclusive and not touching on the issue of whether claimant's various complaints are related to his compensable back injury or to treatment for the back injury. Claimant basically only offers his conclusions and belief of the cause of his problems. As a result, Dr. F was appointed as the Commission's MEO doctor. Dr. F, in his report dated June 9, 1993, recites he had available for review ". . . extensive photocopies and notations consisting of over 400 pages of photocopy material . . ." The patient has had multiple diagnostic and imaging studies the results of which have been reviewed." Based on Dr. F's examination, review of the medical records and notations, Dr. F is of the opinion, within reasonable medical probability, that claimant's various ailments were not caused by claimant's original back injury or treatment therefore. Based on this report and in the absence of medical opinion to the contrary, the hearing officer's decision is supported by sufficient evidence.

Under the 1989 Act, the hearing officer is the trier of fact at the CCH, and 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 trier of fact can believe all or part or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign their testimony, and then resolves the conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993; Texas Workers' Compensation Commission Appeal No. 93155, decided April 14, 1993. As the fact finder, the hearing officer has the responsibility and the authority to resolve conflicts and inconsistencies in the evidence, to assess the testimony of the witnesses, and to make findings of fact. Texas Workers' Compensation Commission Appeal No. 92657, decided January 15, 1993; *citing* Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Where sufficient evidence supports a fact finder's conclusions and his findings are not against the overwhelming weight of the evidence as to be clearly wrong and unjust, then the decision should not be disturbed. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); *citing* Dyson v. Olin Corp., 692 S.W.2d 456, 457 (Tex. 1985); In re King's Estate, 150 Tex. 662, 664-665, 244 S.W.2d 660-661 (1951).

The hearing officer's decision is affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge