APPEAL NO. 93734

This appeal is brought pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 21, 1993, in (city), Texas, (hearing officer) presiding as hearing officer. The sole issue at the CCH was whether the respondent's (claimant) "stroke and neck injuries are a result of his work-related injury of (date of injury)." The hearing officer, declining to use the word "stroke," concluded that a work-related blow to the claimant's head on (date of injury), caused a "contrecoup hemorrhagic contusion to Claimant's right occipital lobe" which in turn caused claimant's visual and cervical disc problems. Appellant (carrier) urges reversal on the grounds "that there was absolutely no evidence of a `hemorrhagic contusion';" that the findings and conclusions of the hearing officer are not supported by sufficient evidence and are contrary to the great weight of the medical evidence; and that the claimant failed to meet its burden of proof of a compensable injury.[1]

DECISION

We affirm the decision of the hearing officer since his findings and conclusions are not against the great weight and preponderance of the evidence and even though different inferences could reasonably be drawn from the evidence and the evidence could support a different result.

Unlike the typical stroke case in which a claimant alleges a traumatic emotional event or some strenuous activity in general causes a stroke, this case involves a claim that a specific event--a blow to the head--caused a "contrecoup" injury or trauma to the back of the brain in the occipital region which, like a stroke or infarct, destroyed a portion of the brain cells which support visual capabilities thus causing a partial loss of visual field. In addition, the claimant alleges cervical disc injury arising out of the same incident.

The facts of this case were hotly contested. Claimant, on Monday, (date of injury), his first day at work as an auto mechanic, was working under a recreational vehicle. The vehicle was raised about 18 to 24 inches off the ground. His eyes became irritated with sweat so he slid out from under the vehicle. Thinking he had cleared the vehicle, he raised himself up, and, in so doing, struck his left forehead on the bumper of the vehicle. He experienced dizziness and some immediate loss of vision. He continued to work the rest of the week with difficulty, and quit the following Monday. There were no witnesses to the incident. The carrier concedes that at some point the claimant had a stroke, but asserts it did not happen in the course and scope of claimant's employment on (date of injury). The carrier also vigorously attacks the claimant's credibility, arguing that he never claimed any

[1] Claimant also contends that the carrier's appeal is untimely because it was not filed with the Commission headquarters in (city) within 15 days after receipt. We find no merit in this contention. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is timely if mailed on or before the 15th day after receipt by the party who wishes to appeal and is received by the Commission not later than the 20th day after receipt of the hearing officer's decision.

sight impairment on his driver's license renewal application, in his request for unemployment compensation and in subsequent jobs involving heavy equipment maintenance. At most, carrier argues, the claimant might have suffered a "bump" on his head on (date of injury), which could not have caused the injuries claimed; that he feigned his responses to the subjective visual fields tests he was given; that several of the treating and consulting physicians relied too much on claimant's own account of what happened in arriving at their diagnoses; and that certain pre-existing factors (heavy tobacco use and a clogged carotid artery which was cleared in July 1991) caused his stroke.

The claimant first sought medical assistance, approximately two or three weeks after the accident, from an optometrist. The record contains extensive medical evidence, including lengthy depositions from specialists. The current diagnosis of the claimant is that he is suffering from postcerebral vascular accident (PVA) left homonymous hemianopsia, that is, a loss of function of portions of the left half of the retina, and herniated disc from C-5 to C-7. The key issue is causation and, for purposes of this appeal, we need only concentrate on those portions of the medical evidence dealing with the relationship between claimant's alleged on-the-job injury and his present condition.[2]

On July 29, 1991, (Dr. M), a neurologist, evaluated the claimant and stated he had suffered a right occipital infarct, which is a contrecoup injury from the left frontal lobe injury. He reaffirmed this diagnosis over the course of treatment throughout the succeeding year. In an oral deposition on April 22, 1993, prepared specifically for the CCH, Dr. M maintained that magnetic resonance imaging (MRI) of the claimant's head showed a right occipital infarct. The brain scan showed a darker area in the right posterior part of the brain, or the occipital lobe, which controls sight. This dark area indicated either a stroke or "possibly an area of trauma." Based on the claimant's description to Dr. M of what had happened on (date of injury), Dr. M felt that the claimant suffered a contrecoup injury which he described as an injury where an initial driving force hits the skull in the forward area of the brain and the brain is driven backwards against the back of the skull, resulting in an injury in the front and back of the head. He believed the blow to the claimant's head caused the brain and neck injury. On cross-examination at the deposition, Dr. M admitted that he was not present at the scene of the accident and relied on the claimant's account of what happened in reaching his diagnosis. He further stated that the medical tests revealed that a stroke caused claimant's injury and visual problems and that the claimant presented himself to Dr. M with this condition, so Dr. M had no information on which to conclude how or why the stroke occurred. He stated that infarcts or strokes could be caused by various factors, including pre-existing diseases as well as external trauma to the brain, and typically produce some sort of hemorrhage or blood clot or blockage of the blood flow to that part of the brain. He was firm in the opinion that the MRI showed only one infarct and that was in the occipital lobe. The presence of blood at the site of the infarct was some evidence of a contusion. Since at his deposition Dr. M had only the radiologist's report to consult and not the actual scan, he could not say with certainty whether the appearance of the blood at the site created

[2] Neither maximum medical improvement, impairment rating or disability is an issue on this appeal.

the further inference that the cause was a contusion or simply a vascular infarct (stroke) without accompanying traumatic event. However, he stated that if the scan showed a "wedge," he would have noted it in his report, which he did not, and would have concluded that the damage to the occipital lobe was caused by a stroke, not a traumatic event.[3] For this reason, he opines that the claimant's infarct was caused by a blow to his head. He discounted the claimant's recent, post-accident clogged carotid artery as irrelevant to the claimant's present condition because that artery affects a different part of the brain. He also does not believe the claimant was acting or exaggerating his condition during his examination.

(Dr. P), a Commission designated neurosurgeon, evaluated the claimant on August 28, 1992.[4] In a Report of Medical Evaluation (TWCC-69) he concluded that the claimant suffered from homonymous hemianopsia; that an MRI scan of July 29, 1991, revealed a hemorrhagic infarction in the right occipital lobe, later resolved with resulting encephalomalacia (softening of the brain). A CT scan of the cervical spine revealed disc herniation at C-5 through C-7 levels. In a letter of October 12, 1992, to the Commission, and quoted in part by the hearing officer in his decision, Dr. P states:

> In regards to [claimant's] stroke, historical information that I received from [claimant] states that he struck his head in the left frontal area (on (date of injury)). It was at that moment that he developed the visual problems which subsequent testing, including a CT scan and MRI scan, revealed a contrecoup hemorrhagic contusion in the right occipital lobe. This produced a left homonymous hemianopsia. Based on these historical facts and based on reasonable medical probability, I can only say that [claimant] has a hemorrhagic contusion in his occipital lobe secondary to the left frontal area injury that he received on the (date of injury). This invokes the contrecoup phenomena which is a well known mechanism for brain injury in neurosurgery.

At a deposition of June 15, 1993, conducted solely for the CCH, Dr. P conceded that he had no personal knowledge of whether or not the claimant was injured at work on (date of injury), but was relying on what the claimant told him about the cause of his problems. His physical examination of the claimant more than a year after the incident disclosed no evidence of lesions on the claimant's head or scalp. He found claimant's cranial nerves intact except for a left homonymous hemianopsia "which means that the left visual field in each one of his eyes was out, which did indicate. . .a problem in the deep visual pathways in the brain." He reached this conclusion about loss of sight through a subjective test based solely on the response of the claimant to questions of Dr. P. He was definite that the claimant suffered

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[3] Dr. M believes a "wedge" shaped appearance on the scan would not, according to reasonable medical probability, be the product of a blow to the head.

[4] Because neither maximum medical improvement nor impairment rating are an issue in this appeal, Dr. P's status as a designated doctor confers no presumptive validity on his opinions or diagnoses about the nature, extent or cause of the claimant's injuries. *See* Sections 408.122(b) and 408.125(e).

an infarct and concluded that it resulted from a contusion to the head because of "the historical evolution of his complaints" as related to him by the claimant. In his opinion, the existence of a "wedge shaped" infarct on a brain scan only means that a blood vessel in that particular area of the brain is not functioning. The cause of the non-functioning blood vessel could be a clot or a bruise. There was no evidence of skull fracture or build up of fluids in the area that would suggest a shifting of the brain. An infarct is another way of saying stroke and "it's very possible that [claimant] could have had a stroke unrelated to the history. . .of him bumping his head." It was possible that some intervening event could have caused the stroke especially in light of the assertion that Dr. M's finding of a year earlier that his neurological and visual fields tests were normal. Dr. P admitted that he could not testify, "based on reasonable medical probability, as to what actually caused (claimant's) infarct. . . ." He based his opinion as to causation on his examination of the claimant, his review of tests done and on claimant's subjective history of the events of (date of injury). He confirmed that the carotid artery had nothing to do with claimant's present condition. As to causation the following exchange occurred:

Q.Okay. Now, you'd agree with me that given the information that you have today, the history about the patient, and the various patients that you have treated, that it is more likely that (claimant) had a stroke unrelated to his job? Is that a fair statement?

A.If you ignore the fact that he says that he developed this visual problem right after he hit his head, if you ignore that, it's most likely a stroke.

Because the MRI showed evidence of blood at the site of the infarct, Dr. P concluded this indicated "some sort of injury." There is no evidence of a blood vessel breakdown or aneurysm or embolism that could have caused this. This leaves only a hemorrhagic contusion as the explanation most consistent with the medical evidence and the claimant's subjective history, which two months later on an MRI looks like a stroke. The force required to cause such a contusion would have to be "significant" and that it would be "rare" to be able to generate that force while rising a foot or two off the ground. Dr. P stated in answer to the following question:

Q.So you'd agree with me that if he just bumped his head, that event would not be the cause of his current problems?

A.Correct.

(Dr. L), a carrier selected physician, performed neurological evaluations of the claimant in June of 1991 and May of 1992. He concluded that his visual field defect was not likely related to a work injury "since a head injury would have produced contusion instead of infarction or brain tumor and it has a different characteristic." He further stated the claimant denied any neck or shoulder pain. His follow-up evaluation of May 1992 concluded that the claimant "appears to have had a stroke. It will be hard to blame the stroke as a result from the head injury, since the MRI findings and head injury is different

from the MRI findings in stroke."

Finally, (Dr. C), a neurologist, by affidavit after review of the claimant's medical records, concluded that the claimant's right occipital infarct was not caused by an alleged job injury; that the visual defects could be accounted for by other factors; and that as a smoker with documented vascular disease, his infarct was caused by arterial occlusion, not by a traumatic stroke. If the stroke was caused by trauma, the MRI studies would have more likely shown a contusion "which they did not". He opined that claimant's stroke was "an ordinary disease of life and is no way related to his employment."

The claimant in a worker's compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of his employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility and the inferences to be drawn therefrom. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. Campos, *supra*. Burelsmith v. Liberty Mutual Insurance Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). An appeals level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Injury may be proven by the testimony of the claimant alone and objective medical evidence is not required to establish that particular conduct resulted in the claimed injury, except in those cases where the subject is so technical in nature that a fact finder lacks the ability from common knowledge to find a causal basis. *See* Texas Workers' Compensation Commission Appeal No. 92083, decided on April 16, 1992.

In this case the only evidence that claimant struck his head while at work on (date of injury), comes from the claimant. Despite the carrier's effort to impeach his credibility at the hearing, the hearing officer chose to believe claimant's account that he struck his head and suffered immediate vision problems. The hearing officer heard the testimony, observed the claimant's demeanor while testifying, and considered the documentary evidence. Under these circumstances, we cannot conclude that the hearing officer's finding the claimant truthful was so against the great weight of the evidence as to be clearly wrong or unjust. Similarly, the hearing officer considered the medical evidence, including that of examining doctors and doctors who reviewed only the claimant's medical records. The carrier

admitted that the claimant suffered a stroke. The only significant question was whether the head trauma caused the homonymous hemianopsia. There was some debate among the doctors as to the terminology of "stroke" verses "infarct." However, there was some evidence in the record to establish that the claimant suffered an injury to his head and occipital lobe.[5] Although the carrier contended that the claimant was feigning vision loss, the hearing officer found in favor of the claimant's credibility on this point. In the end, the issue was one of whether the claimant's head injury was forceful enough to cause the contrecoup injury. Dr. P, in his testimony, excluded as unlikely the other possible causes of the infarct (embolism, aneurysm, burst blood vessel), and based on the claimant's description of what happened, concluded that head injury, if of sufficient force, likely caused the contusion. Based upon all the evidence of record, the hearing officer concluded that the blow to the head was forceful enough to cause and did, in fact, cause a contrecoup hemorrhagic contusion which in turn caused the claimant's visual and cervical disc problems. Although the evidence also supports a contrary conclusion, we nonetheless conclude that the findings of the hearing officer on causation and resulting injuries are not clearly wrong or manifestly unjust. *See* Transportation Insurance Company v. Campbell, 582 S.W.2d 173 (Tex. Civ. App.-Houston [1st Dist.] 1979, writ ref'd n.r.e.).

For the above stated reasons, the decision of the hearing officer is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge

[5] Section 401.011(26) defines injury as "damage or harm to the physical structure of the body. . . ."