

APPEAL NO. 93836

At a contested case hearing held in (city), Texas, on August 9, 1993, the hearing officer, (hearing officer), found that on (date of injury), the appellant (claimant) fell at work as a result of losing consciousness or going into a seizure from a subarachnoid hemorrhage due to the rupture of an aneurysm, and that the damage or harm to the physical structure of her body on (date of injury) was unrelated to any work activity she was engaged in at the time she lost consciousness or went into a seizure prior to her fall. Based on these factual findings, the hearing officer concluded that claimant did not sustain on (date of injury), while in the employ of (employer), a compensable injury under the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.011 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq.*). Claimant's request for review challenges the sufficiency of the evidence to support these determinations while the response filed by the respondent (carrier) asserts the contrary and urges our affirmance.

DECISION

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

The claimant, a food service worker for employer, testified that when she went to work at 7:00 a.m. on (date of injury), in the kitchen area of employer, she felt fine and was neither confused nor light-headed. At the hearing, she could remember calling her daughter, (Ms. ER), at 1:30 p.m. on (date of injury) to discuss transportation arrangements and stating in that conversation that she "was fine." However, claimant could recall nothing further of the events of that day. She further testified, variously, that she could not recall falling at work, and that "I just remember I slipped." She also said that approximately three months before (date of injury), she had been given high blood pressure medication by (Dr. M), whom she had seen for abdominal pain, and that as of four days before (date of injury) she had taken all the pills he had given her. Ms. ER testified that claimant had said she was "doing fine" when she called her on (date of injury). Ms. ER also said that she was called by her mother's supervisor at about 2:00 p.m. on (date of injury), advised that her mother had had an accident, and was asked about her mother's medical history for seizures and epilepsy. Ms. ER said she went to the hospital where claimant worked, and later to (hospital) where claimant was taken for treatment, but that claimant did not tell her what had happened to her at work. Claimant's other daughter, (Ms. EL), testified that when she spoke to claimant in the emergency room at the hospital, apparently before she underwent surgery, claimant stated: "I was taking down the dishes and I fell." According to Ms. EL, claimant told her she had stepped up on a stool, picked up a bowl, and fell down.

According to the signed transcript of his May 14, 1993, telephone interview, (Mr. KY) stated that he worked for employer as an assistant chef and that on (date of injury) when claimant fell, she had been preparing salads about three feet from where he was working. He said something caused him to turn around to see what was behind him and he saw claimant "already in the process of falling." He said she was then already at such an angle that no one could have stopped her from falling. He stated that claimant was not then lifting, pulling, or pushing anything, that she had nothing in her hands, that she said nothing, and

that as she was going down she grabbed the garbage can. Mr. KY also stated that claimant fell straight back and that her whole body "hit flat," including the back of her head which was "what shook [him] up so bad." According to this witness, after claimant fell "her eyes went back in her head and she was shaking a lot," and he called for help. He also said he did not feel claimant's accident was caused by any person or product, that the floor was completely dry, and that there was nothing on the floor or under or close to claimant at the time.

According to the signed transcript of her May 14th, 1993, telephone interview, (Ms. GF) stated she worked for employer, was claimant's supervisor, worked with claimant on (date of injury), and that claimant initially seemed "fine up until a certain point." However, at around noon, Ms. GF saw claimant through an office window and she appeared tired. About two minutes later Ms. GF again saw claimant and "realized that she was looking clammy," and that her eyes appeared larger. Ms. GF, feeling that something was wrong, then stepped out of the office, asked claimant if she was alright, and claimant responded that she was fine. Ms. GF stated she just left it at that but nevertheless felt that claimant had either become upset or was not feeling well. Ms. GF said she did not witness claimant's falling but heard noise in the kitchen upon returning from lunch, went into the kitchen, and saw claimant on the floor in the salad area "having a seizure" with her eyes rolled back and her body in convulsions. Ms. GF said she did not feel the incident was caused by a person or a product, that the floor in the salad area was not slippery, and that claimant had been making a salad for a patient. She stated: "I feel like she had a bowl of salad in her hand." Ms. GF also stated that claimant had previously mentioned that she had blood pressure problems.

According to the signed transcript of her May 14, 1993, telephone interview, (Ms. SS), who was employer's diet director on (date of injury), had seen claimant in the morning and she appeared fine. Ms. SS said she heard Mr. KY call for help and she ran to the kitchen. She recalled that claimant was near a garbage can, had a salad plate in her hand, was moaning, and that her eyes were "rolling around."

In an April 9, 1993, report, (Dr. H), a neurosurgeon, stated that he had reviewed the notes and records pertaining to the incident from both employer and its emergency room, as well as the records from the hospital to which claimant was transferred and treated, and that her primary diagnosis was subarachnoid hemorrhage from rupture of an intracranial aneurysm and her secondary diagnosis was hypertension. According to this report, the notes Dr. H reviewed contained an observation that claimant's eyes were seen to have rolled back just before she fell and she was reported to have had a seizure lying on the floor. He also stated that claimant definitely had a seizure in employer's emergency room. According to Dr. H, claimant's arteriography revealed an aneurysm of the left internal carotid artery, and on (date) she underwent a craniotomy by (Dr. K). She also had an angioplasty for cerebral vascular spasm on March 26th and the insertion of a "VP shunt" on March 30th. He further stated that claimant's medical history included high blood pressure for which she was medicated, and he opined that claimant's high blood pressure "could certainly have a causative role in the rupture of the aneurysm causing a subarachnoid hemorrhage." Dr. H

further stated that claimant's aneurysm had been present for many years, possibly from birth, that its rupture "was the cause of the problems that occurred on the job on (date of injury)," and that there was no indication claimant was doing any heavy lifting or straining which may have contributed to the increased blood pressure and subsequent rupture of the aneurysm.

A May 13, 1993, report from (Dr. L), a neurologist, stated he had reviewed claimant's medical records and that her diagnosis included subarachnoid hemorrhage secondary to aneurysm rupture and seizure disorder secondary to subarachnoid hemorrhage. He opined that these diagnoses were "not reasonably related to a work related injury," and that the arteriogram, which confirmed the presence of a large aneurysm in an area common for aneurysms to reside, "essentially excluded this problem as being related to the patient's fall or implication of a work related injury." Dr. L's report further stated: "It is unreasonable to expect that the patient acquired an aneurysm as a result of a head injury from a work related accident. The patient was noted to have sustained a seizure at or about the time of the injury and this is a common presentation of an aneurysmal rupture or, more precisely, of subarachnoid hemorrhage." Dr. L felt it "likely the patient had an aneurysm that may have been present for years that ruptured spontaneously and led to the problems that the patient sustained."

In his deposition testimony of July 2, 1993, Dr. K, the neurosurgeon who operated on the claimant, stated that he could not recall ever having treated a patient whose ruptured aneurysm resulted from a fall or from impact. Respecting the incident on (date of injury), Dr. K stated: "Well, there was no question that an aneurysm had ruptured. There would still be a question in my mind as to which had occurred first, an aneurysmal rupture or the fall, and I'm not sure about that, and that's something that I can't determine." Dr. K also testified that claimant's aneurysm had been present for a long time, that the hemorrhage was "massive," and that blood pressure increases could make an aneurysm more likely to rupture. He opined that Mr. KY's reported description of claimant's falling back holding on to a garbage can with her eyes rolling backwards was "consistent with" or "a possibility" of a seizure caused by the hemorrhage of an aneurysm, and that he "supposed she could be in the midst of an aneurysmal hemorrhage at that time." Dr. K thought it would be a "rare event" for trauma to cause an aneurysmal hemorrhage. While he "supposed" a trauma could cause blood pressure to rise and cause an aneurysm to rupture, he said he could not recall having seen such a case. Asked whether he had any reason to believe claimant's cerebral aneurysm hemorrhage was caused by trauma, Dr. K responded he did not, but said that he just did not know what the cause was. Asked whether trauma itself could cause an aneurysmal hemorrhage or whether there would first have to be an increase in blood pressure, Dr. K said he thought "the likely sequence of events would be a trauma causing a rise in the blood pressure with aneurysmal hemorrhage following." Asked whether he disagreed with the opinions of Dr. L and Dr. H to the effect that claimant's diagnoses were not work related, Dr. K responded "no," but also said he could not say "one way or the other." Dr. K stated that based on what the claimant told him, on his examination, and on the records made available to him, he did not know whether claimant's aneurysm hemorrhage was in any way precipitated by what occurred at work.

In Texas Workers' Compensation Commission Appeal No. 92211, decided July 10, 1992, the Appeals Panel considered the carrier's appeal in a case where the employee had fallen from a flatbed trailer at work, was operated on approximately two months later for a chronic subdural hematoma, and was determined by the hearing officer to have sustained a compensable injury. The carrier had defended the claim on the bases that the employee's subdural hematoma was attributable to an ordinary disease of life and also that it was due to a domestic quarrel. Noting that it is a claimant's burden to prove that a compensable injury occurred and to show a causal connection between the work and the injury, the Appeals Panel reviewed several Texas cases involving falls at work from other than work-related causes, that is, which were idiopathic in origin, where the injured employees recovered. In those cases, the courts upheld the employees' recoveries on the apparent basis that notwithstanding that the falls themselves were due to preexisting or idiopathic conditions, the consequent injuries (fractured skulls and injured knee) to the employees ("damage or harm to the physical structure of the body," see Section 401.011 (26)) resulted from contact with an object or the pavement at the work site. As we recognized, the cause of the injury was one of fact for the hearing officer as the fact finder to resolve.

We are satisfied the evidence is sufficient to support the hearing officer's findings and conclusions. Although claimant maintained that she first fell at work and that the ensuing trauma of such fall caused her blood pressure to rise which, in turn, caused the rupture of the aneurysm, the hearing officer's findings that her fall was the result of her losing consciousness or going into a seizure from the hemorrhage following the aneurysm rupture, and that the damage or harm to claimant's body was not related to any work activity she was engaged in prior to or at the time she lost consciousness or went into a seizure were sufficiently supported by the evidence, including the expert opinions of Drs. H and L. 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. Section 410.165(a). 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). 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:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge