APPEAL NO. 93990

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq*.), a contested case hearing was held in (city), Texas, on August 10 and October 5, 1993, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) did not sustain a compensable psychiatric or mental anguish injury on (date of injury); that the respondent's (carrier) agreement of May 1, 1992, only accepted liability for a claimed back injury of (date of injury); that the claimant reached maximum medical improvement (MMI) with a five percent impairment rating (IR) on August 6, 1992; and, that the claimant has not had disability as a result of his compensable back injury from August 5, 1992, to the date of the contested case hearing decision. The claimant, in a lengthy request for review, faults some 37 matters in the hearing officer's Decision and Order ranging from the address and workers' compensation claim number to the final Order of the hearing officer. Nonetheless, as we perceive the thrust of his complaints, he urges, contrary to the hearing officer's determinations, that he suffered a mental trauma injury in addition to his back injury on (date of injury); that the carrier never contested the compensability of the mental trauma injury and actually authorized some medical care for this injury; that he had and continues to have disability from the mental trauma injury and is entitled to temporary income benefits (TIBS) from August 6, 1992, to the present. The carrier, urging affirmance, responds that the evidence supports the hearing officer's findings and that they are not so against the great weight and preponderance of the evidence as to be manifestly unjust.

DECISION

Finding the evidence sufficient to support the findings and conclusions of the hearing officer, we affirm the decision.

The evidence in this case is voluminous and will only briefly be set out. The claimant worked for the employer as a draftsman on (date of injury). On (date), he was laid off with others as a result of a general cutback. On March 6th, the employer first became aware of a claimed injury when they got a call from a clinic checking to see if the claimant was covered by workers' compensation as he was seeking treatment for a back injury. Later on March 6th, the claimant notified the employer and the Texas Workers' Compensation Commission (Commission) that he had sustained a lower left back injury "& mental anguish" on (date of injury) when he felt a strain in his back as he was climbing inside some sort of compartment. Apparently there is some high voltage electricity in the area and the claimant indicated in his letter to the Commission that this was of concern to him. In any event, the employer denied liability being unaware of any injury occurring on (date of injury). Also, according to the claimant, the carrier denied course and scope on April 1, 1992 (Claimant's Exhibit No. 11). The carrier's denial is also recorded in a medical record introduced by the claimant (Claimant's Exhibit No. 69). The claimant began treating with (Dr. W), a neurosurgeon, for his back condition on April 23, 1992, and medical reports at this time only involved a back problem and not any mental condition. Medical tests including an MRI and CT scan were basically normal and he was treated with physical therapy including low back strengthening, range of motion and stretching.

On May 1, 1992, the claimant, his attorney and the carrier's attorney agreed in a Benefit Dispute Agreement that the injury of (date of injury), was in the course and scope of employment and that Dr. W was the treating doctor. At this time, there was no mention of any mental problem or treatment for other than a back condition and the carrier states that the only injury under discussion in the agreement was the back problem. The hearing officer determined from the state of the evidence and the surrounding circumstances at the time of the carrier's acceptance of liability for the incident of (date of injury), that the back was the only injury that was under agreement. Regarding the mental injury the claimant testified that it was a component of the back strain and also "a derivative or it, so it was simultaneous injury and also subsequent to the physical injury" and that it occurred "at the same time as the lumbar injury and with secondary subsequent injury as a result of the physical injury" and that "it was simultaneously occurring and the result of."

Dr. W indicated in a report dated July 14, 1992, that he released the claimant to return to work as of 6/18/92 and subsequently certified that the claimant reached MMI with a five percent impairment rating (IR) on August 6, 1992. The claimant disagreed with Dr. W's report and asked him to make changes and corrections. Dr. W, in a letter dated August 27, 1992, refused to change any of his substantive findings. In a follow-up visit report dated "06/28/93," Dr. W mentions the claimant's dissatisfaction with "physicians he has been seeing in the psychologic and psychiatric fields" and suggested that "perhaps his treating physician at this time should be someone in the psychologic field." Dr. W noted that the claimant had had psychologic evaluations from two physicians and that he, the claimant, was not satisfied and wanted Dr. W to write a prescription for him to see the psychiatrist of his own choosing. Dr. W declined to do this.

The claimant was seen by three doctors regarding his psychiatric status, the last of whom, (Dr. MB), was a Commission-selected designated doctor. Dr. MB, in her properly amended report of June 23, 1993, agreed with the MMI and IR rendered by Dr. W and stated the claimant "has not suffered any psychiatric injury as a result of the (date of injury) incident." Dr. MB stated in an earlier report that "psychological test results and face to face psychiatric interview support a personality disorder which is long standing and chronic, and pre-existed the date of injury." In a January 19, 1992, report of (Dr. F), he states:

> With regard to his emotional state, I do not think [claimant] has any emotional problems that preclude him from being able to work. He is not anxious or depressed and he doesn't have any other psychiatric problems that would interfere with his ability to work. This man has a long standing emotional disorder with some paranoia and passive/aggressive behavior. He thinks other people are out to get him. On the other hand, he has had these problems for a very long time and has been able to function during that time. I believe he will continue to be able to function in spite of his paranoid thinking and passive/aggressive behavior. It is not likely that therapy is going to modify this behavior to any significant degree.

Also in evidence was an authorization from the carrier dated 9/30/92 for the claimant

to see (Dr. N), for treatment consisting of two visits per week for two weeks following which the claimant was to be reassessed. The authorization concluded stating "it was also advised that we would be requesting a concurrent review from Health Benefit Management, Inc., concerning the reasonableness and necessity of ongoing treatment and the relationship, if any, to the above [claimant's] alleged Workers' Compensation Claim." Dr. N's evaluation of 9/21/92 states that the claimant is depressed and extremely angry and that if not appropriately addressed, the claimant will continue to deteriorate from a psychological standpoint. He also indicates that the claimant has had psychological problems present secondary to his injury. Dr. N also suggests there is a functional overlay to his symptoms pattern and that he may also be somewhat unrealistic in terms of his appraisal of his present situation. An unsigned report from Health Benefit Management, Inc., dated November 18, 1992, expressed the opinion that the psychological care recommendation by Dr. N was not causally related to the "(date of injury) lumbar strain injury."

A Benefit Review Conference Agreement was entered into by the parties on January 7, 1993, which provided that the carrier would pay TIBS from 4-23-92 to 8-5-92 and that "the parties agree that the claimant is not entitled to any further [TIBS] for this time period [4-23-92 to 8-5-92]." It also provided that the findings that the claimant reached MMI with a five percent whole body IR as found by Dr. W was not in dispute.

The claimant has the burden to establish that he or she sustained an injury in the course and scope of employment. Reed v. Casualty & Surety Company, 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). This same burden applies in the case of asserted mental trauma injuries. Texas Workers' Compensation Commission Appeal No. 93747, decided October 4, 1993; Texas Workers' Compensation Commission Appeal No. 93772, decided October 7, 1993. The hearing officer determined that the claimant had not established by a preponderance of the evidence that he sustained a compensable mental trauma injury on (date of injury). If there is sufficient evidence to support that finding, and the finding is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, there is no sound basis to disturb the hearing officer's determination. *See* In Re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Here, there is clearly sufficient evidence to support the hearing officer's finding. The reports of Dr. F and Dr. MB discount any job-related mental trauma on (date of injury). Further, the circumstances surrounding the asserted mental trauma injury do not support the claimant's position. He apparently indicates that its origin was being near or working around high voltage electricity yet he left that environment on (date), two days after the back strain. This would seem consistent with the medical opinions that any psychiatric or psychological problems were long-standing and had nothing to do with the incident of (date of injury). The hearing officer as the fact finder (Section 410.168(a)) judges the relevance and materiality of the evidence and assesses the weight and credibility to be given the evidence. Section 410.165(a). Any conflicts and inconsistencies in the testimony and evidence are for the hearing officer to resolve. Garza v. Commercial Insurance Co. of Newark, N. J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ.)

The hearing officer determined that the agreement entered into by the parties on May

5, 1992, does not affect the carrier's acceptance of liability for any injury occurring on (date of injury) other than the back injury. The evidence on this matter establishes that the only injury under consideration was the claimant's back problem. Not only was that the subject of the inquiry to the employer about workers' compensation coverage, it was the only problem for which any medical treatment was being sought or treatment being rendered at the time. It was only later that a potential psychological or psychiatric problem was mentioned (other than the mention of mental anguish in the initial report of injury) in any medical report or document. Although not totally clear from the record, Dr. W apparently referred the claimant, pursuant to his request, to a psychologist, Dr. N. Although initially refusing to approve coverage, the carrier subsequently authorized limited examination and treatment, holding in abeyance any final decision on the matter pending a concurrent review by Health Management, Inc., and a determination of "the relationship, if any, to the claim filed by the claimant." The result of the reports from the various sources (with the possible exception of Dr. N who did not directly address the matter) was that there was no psychological, psychiatric, or other mental trauma injury associated with the incident of (date of injury). To the contrary, there was convincing evidence that any such problems were of a long-standing nature and pre-existed the incident of (date of injury). And, we have not and do not hold that a carrier cannot agree to medical examination or treatment to determine the extent of or whether there is any causal relationship between two different injuries alleged to have occurred at the same time or resulting from one another without thereby absorbing liability for the compensability of that injury. To do so could tend to discourage carriers from readily agreeing to appropriate medical examination or treatment in aid of determining whether the injury in question is compensable and the expeditious medical care to treat it if it is. The circumstances in this case are distinguishable from those in Texas Workers' Compensation Commission Appeal No. 92437, decided September 28, 1992, where an issue of timely controverting compensability was raised where an additional injury manifested itself some 10 months later. *See also* Texas Workers' Compensation Commission Appeal No. 93491, decided August 2, 1993. Here, the claimant did not establish the necessary causal relationship between the incident of (date of injury), and the claimed mental condition. Texas Workers' Compensation Commission Appeal No. 92311, dated August 24, 1992.

The evidence to support the hearing officer's determination that the claimant reached MMI with a five percent whole body impairment rating effective August 6, 1992; that the claimant has not had disability since August 6, 1992, as a result of a compensable injury; and that he is not entitled to TIBS after August 5, 1992, is well beyond the preponderance level. Not only are the reports of the treating doctor and the designated doctor (entitled to presumptive weight as to MMI and IR under Section 408.125(e)) in agreement on the date of MMI and rate of impairment, they, as well as other evidence, establish the claimant's ability to return to work on or before August 6, 1992. For that matter, the parties appear to be in agreement on these matters once the issue of the claimed mental injury is resolved. The claimant himself indicated that he was not disabled in the sense that he could not work but only that he could not do the work he was doing at the time he was injured, although he was not clear in what way he was limited. Disability does not hinge on only being able to return to the same job or work. *See generally* Texas Workers' Compensation Commission

Appeal No. 91045, decided November 21, 1991.

The claimant indicates his dissatisfaction with numerous matters in the hearing officer's Decision and Order. We have considered the matters in his request for review and do not find merit to the remaining claims of error. For the reason set forth above and finding the evidence sufficient to support the hearing officer's decision and no prejudicial error warranting corrective action, we affirm.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge