

## APPEAL NO. 94281

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 2, 1994, in (city), Texas, to determine the single issue of whether the claimant's psychological condition is related to his compensable injury of (date of injury). The hearing officer, (hearing officer), held that it was, and the carrier makes this appeal, citing evidence that it contends is contrary to the hearing officer's decision. The claimant did not file a response.

### DECISION

We affirm the hearing officer's decision and order.

The claimant, who was employed by (employer), suffered a back injury when sheetrock he was unloading from an elevator jammed against the elevator. He treated with a neurosurgeon, (Dr. W). While the record did not contain the complete medical records from this doctor, it appears from one of his reports in evidence dated August 25, 1992, that the claimant was found in 1991 to have a herniated disk at L4-5, that by 1992 it had worsened, that Dr. W recommended surgery but that claimant was not agreeable, and that claimant had "relatively severe back as well as right leg pain." In that letter Dr. W also noted claimant's anxiety and the fact that he was seeing a cardiologist, (Dr. A), for his high blood pressure. In the letter, which was addressed to carrier, Dr. W also recommended that claimant have a psychiatric referral in an attempt to control his stress.

At some point thereafter the claimant began seeing (Dr. B), a psychiatrist. In February 1993 Dr. B wrote that claimant was being treated for hallucinations and depression and yet continued to experience significant paranoia which he said was "in large part secondary to his depression, which was precipitated by his on the job injury. Additionally the issue of back injury with recommended surgery is especially threatening to him because of a similar incident involving his brother, in which the brother had surgical complications that worsened his condition." He also said claimant was having "post-traumatic symptoms from the accident itself, depressive symptoms associated with his inability to work and loss of self-esteem, plus paranoid feelings secondary to his perceived 'bad luck,' the loss of control over his job and health and the perception of surgery as a direct threat to his well being, if not his life itself."

Dr. B recommended hospitalization for claimant because he said outpatient treatment was not helping. Apparently in February 1993 the claimant was admitted to a day hospitalization treatment program which Dr. B said "facilitated a significant improvement." In May, however, Dr. B said claimant needed two days a week of intensive treatment in a day hospitalization program to prevent further deterioration in claimant's mental status.

Dr. W completed a TWCC-69 (Report of Medical Evaluation) finding that claimant had reached maximum medical improvement (MMI) on August 25, 1992, with a 12% impairment rating (IR). In July 1993, a Texas Workers' Compensation Commission

(Commission) benefit review officer wrote Dr. W inquiring whether his certification included consideration of the psychological condition for which the claimant was being treated. Upon evaluating Dr. B's records, as well as the records from claimant's hospitalization, Dr. W on August 25th gave his opinion that the claimant's emotional problems seemed to be related to an underlying psychosis, as reflected in Dr. B's May 25th notes which said claimant's condition was more like a primary psychosis rather than any reactive problem. (This report was not in evidence.) Dr. W further stated:

This patient's injury basically involved lifting sheetrock and I do not see how possibly this could be a post traumatic stress disorder since there is no "trauma" involved . . . I certainly empathize with the patient greatly but at the same time I do not see how an emotional disorder of this nature could in any way be work related. We therefore continue to feel that our disability rating of twelve percent should remain the same and we do not see the need to change this.

Dr. W qualified his statement by saying he was not certified in psychiatry, but that the medical literature does not suggest that work injuries are a cause for schizophrenia.

On September 16th, Dr. B replied as follows:

. . . [Dr. W] takes issue with the diagnosis of Post-Traumatic Stress Disorder and with good reason. When [claimant] began treatment last November, the diagnosis was Major Depression with psychotic features and rule-out PTSD. Somewhere along the line the "rule-out" was lost in transcription and Post-Traumatic Stress Disorder became part of his diagnosis when, in fact, it is not. On the other hand, [Dr. W] does not mention the Major Depression diagnosis and assumes the patient's psychosis represents Schizophrenia; his psychosis is part of his primary depressive illness, which is a direct result of his injury with subsequent loss of employment, etc. The diagnosis of depressive psychosis is substantiated by the clinical picture and also by psychological testing done, during the time of his treatment. . . .

On September 9, 1993, a Commission benefit review officer signed a request for medical examination order, directing. (Dr. P), to determine if claimant's current psychological condition is related to his injury of (date of injury), and, if it is, what IR should be assigned.

Dr. P wrote in a lengthy report that he administered a battery of tests to claimant, the results of some of which he said reflect "performing poorly on purpose." He also reviewed medical records of Drs. W and B which do not appear to be in the record of this case, as well as those of other doctors whose reports also were not introduced into evidence. Dr. P stated that claimant's behavioral complaints and psychological symptomatology increased when he expressed dissatisfaction with Dr. W's 12% IR, noting an absence of any such complaints earlier. He also said he did not feel claimant had a posttraumatic stress disorder, which requires the presence of a significant traumatic event that is outside the

realm of normal experience. He noted a conflicting pattern of reporting which he said is not consistent with a psychotic process but is more characteristic of secondary gain, and cited examples. Dr. P concluded that a psychophysiological evaluation (including EMG) was inconsistent with posttraumatic stress disorder or psychosis, and that claimant's symptoms "have been primarily fabricated" and that "significant iatrogenic factors . . . are contributing to his presentation."

At the hearing (Mr. W), employer's director of human resources, testified that the first time employer knew claimant was contending he had psychological problems was approximately two years after the injury and after Dr. W had rendered his 12% IR. The claimant contended he had spoken with Dr. W earlier about his psychological problems but the first time Dr. W had ever mentioned it in writing was in August of 1992.

The hearing officer found that "the claimant's back condition due to his injury of (date of injury), is relatively severe, and such led to and is related to the claimant's current psychological/psychiatric condition." The carrier points to the medical evidence, particularly the reports of Drs. P and W, and contends that the hearing officer's decision is against the great weight of the evidence and is not supported by claimant's medical documentation.

The 1989 Act provides that the hearing officer is the sole judge of the relevance and materiality of the evidence, and of its weight and credibility. Section 410.165(a). Where the evidence is conflicting, the hearing officer is entitled to resolve such conflict, including those in the expert medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

Upon our review of the record, we cannot say that the evidence was not sufficient to support the hearing officer's decision, despite the contrary opinions of Drs. W and P. Dr. W, the neurosurgeon who originally referred claimant for a psychiatric consult, stated in his August 25th letter that he did not believe an emotional disorder "of this nature" could be work related; his opinion was refuted by Dr. B's subsequent letter which indicates Dr. W was mistaken as to claimant's diagnosis. The very thorough report of Dr. P is certainly evidence in carrier's favor, and indicated that doctor's opinion that claimant was fabricating any behavioral and psychological disorders. However, we cannot say that Dr. P's report is of sufficient magnitude to override Dr. B's opinion that claimant's symptoms, including paranoia, were secondary to a depression arising out of his back injury. See Peeples v. Home Indemnity Company, 617 S.W.2d 274 (Tex. Civ. App.-San Antonio 1981, no writ), concerning the reasonableness and necessity of psychiatric treatment following a physical injury.

While the evidence in this case could also have allowed different inferences to be drawn by the fact finder, that fact alone is not a sufficient basis to reverse the decision below. Texas Workers' Compensation Commission Appeal No. 92308, decided August 20, 1992.

The decision and order of the hearing officer are affirmed.

---

Lynda H. Nesenholtz  
Appeals Judge

CONCUR:

---

Joe Sebesta  
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. The record in this case includes strong and probative evidence, from claimant's own treating doctor and from an independent medical examination doctor appointed by the Texas Workers' Compensation Commission, to the effect that claimant's psychological problems, if any, did not arise as a direct result of his back injury. The limited reports from Dr. B, claimant's psychiatrist, themselves describe symptoms, including paranoia and hallucinations, which Dr. W, the treating doctor, felt could not arise from a work injury, and which Dr. P, the initial medical examination doctor, believed were fabricated. Dr. P's comprehensive examination and well documented and reasoned report are compelling to me that there is no basis for a comprehensive psychological injury. Based upon the evidence in this record, I would hold that the hearing officer's determination that the claimant's psychological condition related to and arose out of his original back injury is against the great weight and preponderance of the evidence, requiring this panel's reversal.

---

Stark O. Sanders, Jr.  
Chief Appeals Judge