

APPEAL NO. 94591

On March 14, 1994, a contested case hearing was held. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The hearing officer decided as follows in regard to the disputed issues: (1) the appellant (claimant) did not suffer a compensable mental trauma injury; and (2) the respondent (carrier) timely contested the compensability of the claimed mental trauma injury. The hearing officer further decided that the claimant is not entitled to workers' compensation benefits for his claimed mental trauma injury. The claimant disagrees with the hearing officer's decision and requests that we reverse it and render a decision in his favor. The carrier requests affirmance.

DECISION

Affirmed.

EXTENT OF INJURY

One issue at the hearing was whether the claimant's mental trauma injury resulted from a compensable injury sustained on or about (date of injury). While the hearing officer incorrectly noted throughout his decision a date of injury of (incorrect date of injury), that error has not been complained of on appeal, and, from our review of the record, we cannot conclude that the error as to the date of injury affected the hearing officer's decision on the issues before him.

The claimant testified that he injured his back at work on or about (date of injury), when he lifted items onto a cart at work. The parties stipulated that the carrier accepted liability for the claimant's back injury. The claimant said he has not worked since the date of injury due to back pain. An MRI scan and x-rays were negative. He was initially treated by Dr. K on November 30, 1992, and was then seen by Dr. KR, who diagnosed an "acute lumbar strain with chronic pain state" in February 1993. In June 1993, Dr. B examined the claimant and reported to the Texas Workers' Compensation Commission (Commission) that the claimant complained of back pain, that he should take a work hardening program, and that after the completion of work hardening, the claimant should not require further medical treatment. Dr. B also noted that the claimant was frustrated with his "situation and care," and that the claimant appeared to be "clinically depressed."

The claimant changed treating doctors to Dr. P and in a narrative report dated July 2, 1993, which is not addressed to anyone and which does not indicate that copies were sent to anyone, Dr. P diagnosed thoracic strain, lumbar strain, and "depression, reactive to the consequences of accident injuries on (date of injury)." Dr. P recommended that the claimant obtain a psychiatric consult with Dr. C. In a letter dated August 9, 1993, which is addressed to "Whom It May Concern," Dr. P wrote that he referred the claimant to Dr. C for a comprehensive psychiatric evaluation. The letter of August 9th does not indicate to whom the letter was sent. In an Initial Medical Report (TWCC-61) dated September 14, 1993, Dr. C diagnosed "major depression with psychotic features & melancholia due to back injury," and "chronic pain syndrome, back, severe due to back injury (date of injury)."

The claimant testified that he feels that his mental condition resulted from his back injury of (date of injury). He said that after his injury, he became agitated, depressed, and violent, and could not sleep and had nightmares about killing himself. He attributed his mental condition to chronic back pain and to problems he said he encountered in receiving medical treatment for his back injury. He said that although he received checks for workers' compensation "off and on" he was unable to support his family and himself. He also testified that about five days after his back injury, he sustained a cervical strain in a car accident. He further testified that within two months after his work-related back injury his fiancée left him and took their son with her, and that he moved in with his mother. In addition, the claimant said that about two months after he injured his back, his brother died from kidney failure. He said that prior to his back injury he had never had any emotional or mental problems.

In a report dated October 28, 1993, Dr. C stated that:

His [claimant's] emotional condition has been jeopardized not only by his loss of work and ongoing differences of opinion and conflict with his workers' compensation carrier, but also by the death of his brother on January 14, 1993 and the recent separation from his common-law-wife and young son due to his progressive mental decompensation including irritability as well as irrational and threatening behavior. He had been suicidal for several months before coming to me for evaluation. However, no overt act had taken place.

* * * * *

[Claimant's] depression is directly related to his work injury and his loss of work, his loss of physical vitality, and his economic insecurity, and his concern about his future medical and occupational status.

The hearing officer found that in December 1992, the claimant had unfortunate family circumstances and life stresses where his fiancée left him and his child left; that he had further unfortunate circumstances in January 1993 with the death of his brother; and that he was unable to work because of his back injury. The hearing officer further found and concluded as follows:

FINDINGS OF FACT

No. 6. In September 1993, [claimant] began to seek psychological treatment with [Dr. C] for symptoms of depression. These symptoms of depression arose from circumstances of personal life stresses including the unemployment occasioned by his [sic] (incorrect date of injury) injury.

No. 7. [Claimant's] symptoms of depression are not the result of a [sic] (incorrect date of injury) injury.

CONCLUSION OF LAW

No. 6. Because [claimant] has not shown by a preponderance of the evidence that he suffered a mental trauma injury that either arose as a natural result of a [sic] (incorrect date of injury) back injury or as an independent mental trauma injury on [sic] (incorrect date of injury) he has not shown that he had a mental trauma injury within the meaning of the Act, and [carrier] is not liable for benefits for such mental trauma injury.

The claimant had the burden to prove that his claimed mental trauma injury resulted from his compensable back injury. It has been held that the immediate effects of the original injury are not solely determinative of the nature and extent of the compensable injury. Texas Employers Insurance Association v. Thorn, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ). However, in Texas Employers Insurance Association v. Wilson, 522 S.W.2d 192, 195 (Tex. 1975), a case concerning whether a claimant's eye injury extended to his condition of traumatic neurosis, which included anxiety over obtaining future work, the court stated that "[i]t therefore must be concluded that although the claimant may be disabled by reason of a neurosis traceable in part to *circumstances* arising out of and immediately following his injury, there must be a finding that the neurosis was the result of the *injury*." [Emphasis in original.]

The issue as to whether the claimant's claimed mental trauma injury resulted from the claimant's back injury was an issue of fact to be determined by the hearing officer who is the judge of the weight and credibility of the evidence, and who determines what facts have been established from the evidence. Texas Workers' Compensation Commission Appeal No. 94321, decided May 3, 1994; Section 410.165(a). Generally, the opinion evidence of expert medical witnesses is but evidentiary, and is not binding on the trier of fact. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App. - Texarkana 1974, writ ref'd n.r.e.). Where, as here, sufficient evidence supports the hearing officer's findings and conclusions, and the findings and conclusions are not so against the overwhelming weight of the evidence as to be clearly wrong and unjust, the hearing officer's decision should not be disturbed. Texas Workers' Compensation Commission Appeal No. 94538, decided June 16, 1994.

TIMELY CONTEST OF CLAIMED MENTAL TRAUMA INJURY

Section 409.021(c) provides in pertinent part that, if an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6(c) (Rule 124.6(c)) provides for written notice of the injury to the carrier. In the instant case, the carrier filed a Notice of Refused or Disputed Claim (TWCC-21) with the Commission on November 12, 1993, in which it stated that it controverts the new diagnosis of psychiatric care as not

occurring in the course and scope of employment. The carrier indicated on the TWCC-21 that it had sent copies of that document to the claimant and to the claimant's representative on November 12, 1993.

The hearing officer found and concluded as follows:

FINDINGS OF FACT

No. 8. The carrier first had written notice of [claimant's] claiming a mental trauma injury on or about (date) when it received a report from [Dr. C].

No. 9. On 12 November 1993, the carrier filed a TWCC-21 with the Commission in Austin stating in its relevant part as follows: "carrier controverts new diagnosis psychiatric care as not occurring in course and scope of employment." Fairly read, the language appraises the claimant and the Commission that the carrier is contesting the compensability of a claimed mental trauma injury. 12 November 1993 is within 60 days after (date), the date the carrier first had notice that [claimant] claimed a mental trauma injury.

The claimant asserts that the carrier received written notice of the claimed mental trauma injury from Dr. P's narrative report of July 2, 1993, and from Dr. P's letter of August 9, 1993 (contrary to the carrier's assertion in its response, the August 9th letter was in evidence), and therefore, the carrier's contest of compensability of the claimed mental trauma injury was not timely. The carrier asserted at the hearing that it first received notice of the claimed mental trauma injury when it received Dr. C's TWCC-61 dated September 14, 1993. As previously noted, Dr. P's narrative report of July 2nd is not addressed to anyone, and his letter of August 9th does not indicate to whom it was sent. In addition, neither the report of July 2nd nor the letter of August 9th contains a date stamp showing receipt by the carrier, and there was no evidence adduced at the hearing as to when the carrier received these documents.

In Texas Workers' Compensation Commission Appeal No. 93326, decided June 10, 1993, we stated "[w]e have previously indicated that magic words are not necessary to contest the compensability of an injury under the Article and Rule and that we look to a fair reading of the reasoning listed to determine if the notice of refusal or denial is sufficient." See *also* Texas Workers' Compensation Commission Appeal No. 93533, decided August 9, 1993, where we stated in regard to the adequacy of a contest of compensability that "[t]he key point to be determined is whether, read as a whole, any of the reasons listed by carrier would be a defense to compensability that could prevail in a subsequent proceeding."

Having reviewed the record, we conclude that the hearing officer's findings and

conclusions are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge