APPEAL NUMBER 94754
FILED JULY 18, 1994

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 19, 1994, a contested case hearing (CCH) was held in (City 1), Texas, (hearing officer) presiding as hearing officer. The issues agreed upon to be resolved were:

1.Is the Claimant's hemorrhage/aneurysm a result of the compensable injury sustained on or about _____?

2.Did the Claimant report an injury to the employer on or before the 30th day of the injury and, if not, does good cause exist for failing to report the injury timely?

3.Did the Carrier specifically contest compensability on the issue of timely notice to the employer pursuant to the Texas Labor Code, Section 409.022?

4.Did the Claimant have disability resulting from the injury sustained on _____ entitling him to temporary income benefits and if so, for what period(s)?

The hearing officer determined that claimant's "hemorrhage/aneurysm" was not the result of a compensable injury suffered on or about _____, that claimant did not timely report the injury to his employer and had no good cause for failing to do so, and therefore claimant did not have disability from the injury sustained on _____. The hearing officer further found that carrier had not specifically contested compensability on the issue of timely notice and therefore carrier "waived its right to controvert compensability on this issue (the timely notice issue)."

Appellant, claimant, contends that he had timely reported his injury to the employer, that he was entitled to temporary income benefits (TIBS) and that his hemorrhage/aneurysm was causally related to his _____, accident as attested to by Dr. C. Claimant requests that the Appeals Panel "remand this case to the hearing officer to allow full factual development of the (TIBS) and/or Income Impairment Benefits which are due to claimant." Respondent, carrier, responds to each of the points raised by claimant and requests that we affirm the decision.

DECISION

The decision and order of the hearing officer are affirmed.

Initially, we note there was some confusion regarding the exact date of injury. Claimant initially alleged the date of injury to be (claimant’s alleged date of injury), but

subsequently determined, apparently after some investigation, that the more likely date of injury was _____, when work records show he was doing the type of work that he alleged he was doing when injured. Claimant was a body technician ("body man") at employer, a car dealership. Claimant testified that on the date in question he was beneath a car using a "Mac screwdriver" (a large screwdriver approximately two feet in length, weighing approximately four pounds) when the screwdriver slipped, striking claimant in the head where his forehead and hairline meet. Claimant testified that he bled a little, but did not believe the injury was serious. Claimant further maintained that he reported the incident to Mr. O and to his supervisor, Mr. SK. Mr. O testified that claimant did tell him that he had hit himself with the screwdriver but also that he was a coworker (another body technician) and was not claimant's supervisor. Mr. SK testified in person, by written deposition, and by videotaped deposition, denying any injury had been reported to him on (claimant's alleged date of injury) or _____. It is undisputed that claimant continued to work that day and the following two days without incident.[1] The following week (on (3 days after date of injury)), claimant and his wife flew to Pennsylvania on vacation to visit friends and relatives. Both claimant and his wife testified that during the night of (8th & 9th day after date of injury) claimant awoke with a severe headache which made him ill. Claimant's wife took claimant to a local hospital the next day, where claimant was given medication but no diagnosis was made. Claimant's did not improve and after another visit to the hospital claimant was advised to return home to (City 1) as soon as possible to seek medical attention. Claimant and his wife testified they returned to (City 1) on (11th day after date of injury) and sought medical care at a local hospital the next morning. Claimant was diagnosed as having a subarachnoid hemorrhage and anterior communicating artery aneurysm. Claimant was transferred to a larger hospital where surgery was performed to stabilize his condition.

It is uncontroverted that claimant's wife spoke with Mr. SK either on September 20th or the days immediately following and that Mr. SK was aware that claimant was in the hospital with a ruptured aneurysm. Mr. SK, however, denies that he was told, or that he knew, that claimant was claiming that the ruptured aneurysm was work related. Claimant apparently was using group health insurance coverage. Claimant remained in the hospital until October 1st, when he was discharged. Claimant's treating doctor and the doctor who performed the surgery was Dr. DC, a neurosurgeon.

There is extensive medical evidence in the record, both from treating doctors and consultants. Dr. DC, in a letter dated October 12, 1993, confirmed he had treated claimant "for subarachnoid hemorrhage, secondary to rupture of an anterior communicating artery aneurysm." Dr. DC in that letter further stated "It is entirely possible that this heavy blow to the head may have exacerbated the presence of an anterior

[1]There was some testimony whether claimant went "jet skiing" either the weekend before or the weekend after the incident in question, however, that appears to have no bearing on the final resolution of the case.

communicating artery aneurysm, resulting in premature rupture thereof." Further, in a letter dated December 22, 1993, Dr. DC stated:

> It appears in retrospect that the patient's head injury while at work necessitated the taking of Excedrin for control of the pain. The aspirin contained therein may have in some way precipitated his subarachnoid hemorrhage by causing a secondary coagulopathy and resulted in the necessity for hospitalization and subsequent disability that he has suffered from.

Dr. DC, in a subsequent deposition taken on February 16, 1994, in essence recanted the cited statements, stating that he had very specifically told claimant's wife "that the screwdriver did not cause the aneurysm, a hundred times, if not once, but she was quite insistent on making that connection . . . . " Dr. DC indicated the above cited notes were "in response to that badgering to come up with some kind of a connection . . . . " Dr. DC, and other medical experts, testified that "Ruptured aneurysms happen in a fraction of a second" and that there is no such thing as a slow leaking aneurysm. Dr. DC released claimant for full duty on January 3, 1994.

Claimant did not go back to work that day and there is some inconsistent testimony about whether Mr. SK "opened a stall" so claimant could return to work or, according to claimant, that he was told not to come back to work because there was no work for him. Claimant alleges memory loss, confusion and severe depression with suicidal ideation. After claimant was released for duty, claimant's attorney referred claimant to Dr. C, a psychiatrist. Dr. C in a report dated February 17, 1994, diagnosed claimant with:

> (1) DSM III-R Code 294.83 Organic Mood Disorder, depressed type, severe, with psychotic features secondary to on-the-job injury on _____ casing subsequent subarachnoid hemorrhage, (2) Status post subdural hematoma, post-traumatic, following on-the-job injury of _____, (3) Status post treatment with G.D.C. Coil for subachnoid hemorrhage.

In the same report, regarding causation, Dr. C opined that claimant's:

> head trauma on _____ directly led to his subsequent subarachnoid hemorrhage and the need for his hospitalization and neurosurgical treatment. This is reasonable medically probable and (Dr. DC), during my consultation with him today, agreed with me on this.

Dr. F, an internal medicine and nephrology specialist, reviewed claimant's medical records and in a deposition on February 7, 1994, confirmed claimant's ruptured aneurysm of the anterior communicating artery and opined that claimant's aneurysm was "probably congenital in nature" and "was not the consequence of trauma," giving reasons for his

opinion and referring to articles and studies. Dr. F testified he believed the ruptured aneurysm "was spontaneous and was not related to his occupation." Dr. F, based on Dr. DC's history, opined that the ruptured aneurysm occurred during the four-day period when claimant was in Pennsylvania.

Dr. GF, a board certified specialist in internal and occupational medicine, also reviewed claimant's medical records and testified both in person at the CCH and by deposition. Dr. GF unequivocally testified that the reported injury of _____ did not cause the aneurysm to rupture because aneurysms of this type "rupture spontaneously" causing severe headache pain (such as claimant testified he had the night of (8^{th} & 9^{th} day after date of injury)), and there have been no reports of aneurysm rupture due to trauma without "skull fracture or penetrating wound (bullet etc)." Dr. GF also emphasized the ruptured aneurysm was at the base of the brain whereas the reported injury was on the forehead at the hairline, several inches away from the aneurysm and that it would be virtually impossible for a blow which left no visible marks or injury to be severe enough to cause an aneurysm, several inches away, to rupture. Dr. GF also testified aneurysms rupture instantaneously and there is no such thing as a slow leaking aneurysm which causes symptoms over a period of one or two weeks.

Carrier further alleges through the testimony of Mr. SK that the injury could not have occurred as claimant testified and that claimant did not report the injury as work related until October 18, 1993. Mr. SK testified that although he was aware claimant was in the hospital he did not know claimant was alleging the injury was work related until October 18, 1993.

As noted previously, the hearing officer determined in response to the issue as presented to her, that although the claimant did not timely report an injury to the employer (and did not have good cause for failing to do so), "The carrier did not specifically contest timely notice to the employer pursuant to the Texas Labor Code, Section 409.022 and has waived its right to controvert compensability on this issue." This determination was not appealed (by the carrier). Claimant, however, appealed the finding only to the extent that he had reported his injury timely, or in the alternative had good cause for failing to do so. In that the hearing officer found in claimant's favor on this issue by finding that the carrier had waived its right to controvert compensability on the issue of timely reporting of an injury to the employer, we need not discuss that issue further.

The hearing officer further determined that the "hemorrhage/aneurysm" was not the result of the injury sustained on or about _____, based on reasonable medical probability. The hearing officer recognized, in her statement of evidence, that Dr. C had opined it was "reasonably medically probable" that the _____ injury caused the subsequent subarachnoid hemorrhage, however, she pointed out three other doctors, (apparently referring to Drs. F and GF) including the claimant's treating doctor, Dr. DC, a neurosurgeon, opined that based on reasonable medical probability, the aneurysm was not

caused by the _____, injury. Claimant appealed that determination citing and emphasizing Dr. C's statement (in his February 17, 1994 report) which "clearly show(s) the causal link between the _____, accident and the hemorrhage/aneurysm." We would note that Dr. DC, the neurosurgeon, vacillated and wrote seemingly contradictory reports and subsequently, in a deposition, recanted statements which would indicate that there was a connection, stating he had been "badgered" by claimant's wife to come up with some kind of connection. Further, Dr. C, in his February 17, 1994, report also states that Dr. DC, "during my consultation with him today, agreed with me on this (meaning the accident led to the hemorrhage)." We merely point out that Dr. DC's opinion is not as unequivocal as the hearing officer seems to indicate, however, there is ample evidence, particularly from Dr. GF, who testified at the CCH, that the ruptured aneurysm happened spontaneously, in a fraction of a second and that it would cause extreme pain in the form of a headache and that there was no such thing as a slow leaking ruptured aneurysm.

The hearing officer is the sole judge of the relevance and materiality of the evidence and the weight and credibility that is to be given to it. Section 410.165(a). The hearing officer resolves inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.): Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder, and does not normally pass on the credibility of witnesses or substitute its own judgment of 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 for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

On the issue of whether claimant had disability resulting from the injury of _____, the hearing officer determined that claimant did not and thus was not entitled to any TIBS. The claimant contended that claimant's testimony clearly established that he was entitled to TIBS and the fact that claimant received unemployment is not dispositive of the issue of disability. We would agree only that the fact claimant received unemployment compensation would not, in and of itself, bar the payment of TIBS. However, claimant clearly did not have any disability from the screwdriver incident and having affirmed the hearing officer's determination that the injury of _____, did not cause the hemorrhage/aneurysm, by terms of the definition of disability in Section 401.011(16), claimant's inability to work was not because of a compensable injury and therefore claimant did not have disability.

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge