

APPEAL NO. 94864

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was convened on April 19, 1994, and was continued to May 13, 1994. The parties stipulated that claimant sustained an injury (slip and fall) in the course and scope of her employment on (date of injury). The hearing officer took evidence on the disputed issues, namely, whether the respondent's (claimant) "syrinx condition and symptomatic, previously compensated hydrocephalus" resulted from the compensable injury of (date of injury); whether claimant has reached maximum medical improvement (MMI) and, if so, on what date; claimant's impairment rating (IR), if she has reached MMI; and, whether claimant has had disability resulting from the (date of injury)injury, and, if so, for what periods. Making a number of factual findings, the hearing officer determined that claimant's pre-existing syrx condition and hydrocephalus were aggravated by her fall and thus were a result of her injury. The hearing officer rejected as contrary to the great weight of the other medical evidence the designated doctor's report that claimant reached MMI on March 14, 1994, with an IR of 13%. The hearing officer reasoned that the designated doctor did not consider claimant's syrx condition and hydrocephalus in his certification of MMI and IR. Based on the factual findings, the hearing officer concluded that claimant's syrx condition and symptomatic, previously compensated hydrocephalus did result from her (date of injury), compensable injury, that she has not reached MMI, that no IR can be assigned since she has not reached MMI, and that she has had disability from (date of injury), which has continued to the date of the hearing.

The appellant (carrier) filed a request for review challenging the sufficiency of the evidence to support findings that claimant's pre-existing hydrocephalus was aggravated by her fall at work, that her medical records established a causal connection between her employment and her hydrocephalus, and a conclusion that her syrx condition and hydrocephalus were a result of her compensable injury. The carrier also asserts error in the hearing officer's rejection of the designated doctor's MMI and IR determinations. The carrier asserted, both at the hearing and on appeal, that an on-the-job aggravation of claimant's pre-existing syrx condition and hydrocephalus did not result in such condition becoming part of the compensable injury. The carrier asks the Appeals Panel to reverse and render a new decision that claimant's syrx condition and hydrocephalus are not the result of her (date of injury) compensable injury, and that she reached MMI on March 14, 1994, with an IR of 13%, as determined by the designated doctor. The carrier has not, however, challenged the hearing officer's finding and conclusion concerning claimant's having disability since (date of injury). In her response, claimant first asserts that the carrier's appeal is untimely. In the alternative, claimant contends that the evidence is sufficient to uphold the decision below.

DECISION

Affirmed.

Claimant asserts that the Texas Workers' Compensation Commission (Commission) mailed her copy of the hearing officer's decision on June 16, 1994, and that she received it on June 17th. Assuming the carrier also received its copy on that date, claimant contends that the carrier's appeal was not filed not later than 15 days thereafter and was thus untimely. The Commission's records show that the hearing officer's decision was distributed to the claimant, the employer, and the carrier's Austin, Texas, representative on June 16, 1994. Commission notices and communications are sent to carriers' Austin representatives. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 102.5(b) and 156.1 (Rules 102.5(b) and 156.1). See also TWCC Advisory 92-07, dated November 3, 1992. Section 410.202(a) of the 1989 Act provides that a party shall file an appeal not later than 15 days after receipt of the hearing officer's decision. The carrier's appeal does not state when the hearing officer's decision was received. Thus, we turn to Rule 102.5(h) which provides that the Commission shall deem the received date of written communications to be five days from the date mailed (here, placed in the carrier's Austin representative's box). The decision having been distributed or placed in the Austin representative's box on June 16, 1994, and applying the five day deemed rule plus the 15 days for filing an appeal, we compute the last day of the carrier's period for filing the appeal to be July 6, 1994. Since the carrier's appeal was received on July 5, 1994, it was timely filed.

Claimant has attached to her response a medical record obtained subsequent to the hearing below. Since the Appeals Panel considers only evidence in the record developed at the hearing (Section 410.203), subject to certain exceptions not applicable here, that document will not be considered.

It was claimant's theory that when she fell at work she not only injured her neck, right shoulder, arm, hip and back, but also aggravated her pre-existing previous hydrocephalus and syrinx conditions, apparently as a result of her neck being forcibly bent as her head struck the tile floor, and, that she is not yet at MMI because surgical shunt procedures are being recommended for her hydrocephalus and, possibly, for her syrinx condition. It is useful at the outset to define the medical terms involved in this medically complex case. Dorland's Illustrated Medical Dictionary, 26th edition, defines communicating hydrocephalus as "hydrocephalus in which there is no obstruction in the ventricular system, and cerebrospinal fluid passes readily out of the brain into the spinal canal, but is not absorbed." Syringobulbia is defined as "the presence of cavities in the medulla oblongata;" syringomyelia as "a condition marked by abnormal cavities filled with liquid in the substance of the spinal cord;" and hydromyelia as "a pathologic condition characterized by accumulation of fluid in the enlarged central canal of the spinal cord." Syrinx is defined as "a tube or pipe; also a fistula." Though not clearly explained in the record, it appeared from the various medical records that claimant's syrinx condition referred to her cervical syringomyelia and syringobulbia revealed by MRI scans, which were considered related and perhaps secondary to her communicating hydrocephalus. Dr. JH, a consulting neurosurgeon to claimant's current treating doctor, issued a report

dated February 25, 1994, which stated: "An MRI scan of the patients brain, cervical, and upper thoracic spine revealed hydrocephalus, syringobulbia, and syringomyelia, extending to at least T8. The syringobulbia appeared to communicate with the patient's ventricular system. The brain stem syrinx very likely communicates with the spinal cord syrinx." Throughout the hearing, the parties, seemingly as a form of shorthand, referred simply to claimant's hydrocephalus condition, as do Findings of Fact No. 5, No. 6 and No. 7. Accordingly, in response to a contention of the carrier, we view a fair reading of those findings, in the context of the parties' usage at the hearing, to infer the syrinx condition which is mentioned in Conclusion of Law No. 2.

Claimant testified that on the day of her accident, she was working as an administrative assistant at a physical therapy (PT) clinic (employer), that she retrieved a box of materials from beneath a table, and that as she bent and twisted to replace the box under the table she slipped and fell onto the tile floor on her right side striking her right hip, arm, shoulder, and "forcibly bending my head." She said she weighed approximately 240 pounds at the time and was 47 years of age. Claimant said her employer sent her home and that same afternoon she saw her family doctor, Dr. K, who treated her and took her off work. Claimant testified that neither Dr. K nor any other doctor with whom she has since treated has released her to return to work, and that she has not been able to work because of her injuries. Dr. K's records indicate he initially diagnosed cervical and lumbar strains and right shoulder and forearm contusions. On (date), Dr. K reported that claimant was having some headaches, neck soreness, and a lot of back discomfort. He further reported that an MRI "revealed preliminary diagnosis of hydrocephalus unrelated to above." He later added a diagnosis of left sacroiliac joint dysfunction and scoliosis. Claimant said she treated with Dr. K until October 13, 1993, when he advised he could do nothing further for her, and then changed her treating doctor to Dr. BCB. In the meantime, claimant was also seen during the July through October 1993 period by Dr. BJB, a physical medicine specialist, for work conditioning.

Claimant was referred by Dr. K for a neurological evaluation for possible chronic hydrocephalus and Dr. MS performed such evaluation on July 2, 1993. Dr. MS noted that claimant's complaints included cervical pain and diffuse headaches, and he observed some ptosis (upper eyelid drooping) in her left eye and a head tilt, with some decreased pain in her left arm and face. He also recorded that claimant had had headaches all her life. Claimant testified that her headaches and other (unspecified) symptoms became progressively worse after her fall. Dr. MS reported that review of cervical and brain MRI scans revealed "a communicating hydrocephalus with a syringobulbia and syringomyelia as well." Dr. MS felt that a congenital problem was implied, that the hydrocephalus would be considered "an arrested hydrocephalus," and he did not feel claimant then required a shunt.

On July 30, 1993, Dr. BJB examined claimant and diagnosed left sacroiliac joint dysfunction, obesity, anxiety neurosis, and hydrocephalus. He noted that claimant's hydrocephalus was "thought to be well compensated," but that she appeared to be having

"a great deal of difficulty dealing with this . . . " Dr. BJB later added a diagnosis of left lumbar radiculopathy and scoliosis. On August 20, 1993, Dr. BJB reported that claimant's cognitive or emotional capabilities to handle her job appeared a major deterrent to her return to work and queried whether her hydrocephalus was contributing to this problem. Dr. BJB reported on October 1, 1993, that claimant had "essentially reached" MMI with an IR of nine percent for her spinal disorder and abnormal lumbosacral range of motion (ROM). He also stated that claimant "will continue to be a challenging medical and psychosocial patient until her multiple contributing factors have resolved or stabilized." In evidence was a Report of Medical Evaluation (TWCC-69) signed by Dr. K which stated that claimant reached MMI on "10-25-93" with an IR of nine percent and which referred to an attached report of Dr. BJB, dated October 1, 1993, stating an IR of nine percent.

On November 23, 1993, claimant's new treating doctor, Dr. BCB, diagnosed discogenic low back pain from her work related injury and lumbar sprain, a "communicating hydrocephalus that is likely congenital," and "hydromyelia likely longstanding and secondary to the communicating hydrocephalus." On January 4, 1994, Dr. BCB reported that claimant had a history of birth difficulty ("likely suffered neonatal hypoxia"), and he stated: "I think that this likely explains her history of likely what has been slowly progressive communicating hydrocephalus." Dr. BCB also commented on claimant's headache history noting that while she has had headaches for years, they are now "tremendous" and "much worse in the last six months." Dr. BCB's January 4, 1994, report stated his impression as follows: "1. Communicating hydrocephalus with cervical hydromyelia. 2. Diffuse body pain and lumbar sprain that I suspect is all due to hydrocephalus. I think that she did have a superimposed work injury of lumbar sprain on top of the hydrocephalus that has probably been very slowly progressive through the years." Dr. BCB also stated that he felt claimant should see a neurosurgeon regarding her hydromyelia and hydrocephalus because she might be clinically improved by a shunting procedure. On January 5, 1994, Dr. BCB saw claimant, recorded her reporting of upper extremity tremors and paresthesia, and stated that while she clearly had a component of a diffuse back sprain from her injury, he felt most of her symptoms were from her communicating hydrocephalus and cervical hydromyelia.

In February 1994, Dr. BCB had claimant evaluated by Dr. JH, a neurosurgeon, and Dr. BCB noted on February 17, 1994, that he agreed with Dr. JH that relief of claimant's symptoms indicated a need for a ventriculoperitoneal shunt and that she may also need an upper spinal cord shunt. In an April 21, 1994, report, Dr. BCB's diagnosis was stated as "1. Communicating hydrocephalus with cervical hydromyelia. 2. Status post on-the-job injury with cervicothoracic lumbar sprain and disruption of normal cerebrospinal fluid circulation." Dr. BCB went on to state: "This is a very complicated case, but certainly according to Texas Workers' Compensation rules and regulations, if there is any aggravation of a pre-existing problem caused by a work-related injury, then this is considered a new work injury problem, and that is clearly the case in this instance."

Dr. JH's February 7, 1994, report stated that a recent MRI scan of the brain showed

moderate to severe hydrocephalus and the MRI scan of the cervical spine showed a syrinx of the cervical canal from the medulla to the limits of the scan in the upper thoracic region. He felt that claimant has a cervical and probably a thoracic syringomyelic condition, that her hydrocephalus was contributing to her syrinx, and that the hydrocephalus appeared to be progressive in that claimant's headaches are much worse since her injury. Respecting the effect of the fall at work on her hydrocephalus and syrinx conditions, Dr. JH reported that claimant's low back and right lower extremity leg pain, as well as her neck pain and upper extremity symptoms appeared "clearly related to her injury." Dr. JH further stated:

I believe that her fall, with the forceful bending of her neck on striking her head, has aggravated her syrinx condition and may possibly have activated and made symptomatic a previously `compensated' hydrocephalus. I do not believe her hydrocephalus is caused from her injury, but her headaches have worsened temporally in conjunction with her injury. It is also possible [Dr. JH's February 25, 1994 report stated "probable"] that the syrinx is causing occipital headaches that are aggravating her increased intracranial pressure headaches from the hydrocephalus.

Dr. JH's records contained a note of February 18, 1994, stating that Dr. E with the carrier had called to discuss claimant's case and that Dr. JH had explained "the aggravating nature of the patient's on-the-job injury to her syringobulbia, syringomyelia, and hydrocephalus," in addition to her right lower extremity sciatica, bilateral sacroiliitis, and lumbar myofascial pain. Dr. JH also wrote the carrier on March 21, 1994, stating the following: "The mechanism of the forceful bending of the patient's neck as occurs when one falls on one's side is the point that I was making. This mechanism could have aggravated her syrinx condition, and may possibly have activated and made symptomatic a previously `compensated' hydrocephalus."

Claimant testified that on February 2, 1994, the Commission had her examined by the designated doctor, Dr. TJB, who first reported that she had not reached MMI, but then issued another report on April 8, 1994, stating claimant had reached MMI on March 18, 1994, with an IR of 13%, and that he did so without re-examining her. Dr. BCB indicated that he did not feel that an orthopedist should be the designated doctor in a complicated neurosurgical case. Dr. TJB's February 2, 1994, narrative report stated an "Orthopaedic Diagnosis" of chronic cervical and lumbar strain "secondary to (month year) injury," and a "Secondary Diagnosis: Arnold-Chiari Type Malformation (congenital)." He concluded that claimant "continues to have multiple problems concerning this (month year) injury . . . and will have to conclude at this time that this individual is not medically stationary or reached [MMI]." Dr. TJB anticipated claimant would reach MMI in 12 to 16 weeks, after Dr. BCB and Dr. JH complete their diagnostic studies and consultations. Dr. TJB's Report of Medical Evaluation (TWCC-69) stated an anticipated MMI date of "31 August 94."

A Commission benefit review officer (BRO) wrote Dr. TJB on March 10, 1994, asking whether Dr. TJB's opinion that claimant had not yet reached MMI was based on her

syrinx and hydrocephalus conditions "or" her low back, right leg, and neck pain and upper extremity symptoms "resulting from the fall at work." Dr. TJB's response of March 14, 1994, stated an orthopedic diagnosis of chronic cervical and lumbar strains and lumbar fibromyalgia, and a secondary diagnosis of hydrocephalus, syringobulbia, and cervical syringomyelia. This letter also stated that claimant has reached MMI for the orthopedic and musculoskeletal problems resulting from her (date of injury), injury, and that claimant has "significant ongoing medical problems including her neurologic condition which was congenital and developmental in nature and pre-existed her (date of injury) injury." Dr. TJB's TWCC-69 dated April 8, 1994, stated an MMI date of "14 March 94" and an IR of 13%.

On March 10, 1994, the BRO ordered that claimant be examined by Dr. SG to determine whether claimant's fall at work caused her syrx condition and hydrocephalus "to become symptomatic." Dr. SG's March 29, 1994, report indicated the results of his clinical examination, noted that no diagnostic studies were available, and stated that "by history" claimant's diagnosis was communicating hydrocephalus, possible cervical syringomyelia, and cervical and lumbar myofascial strain. The report concluded that a "final evaluation" would be written when the diagnostic studies became available. No further evidence from Dr. SG was introduced.

We do not find merit in the carrier's argument that the hearing officer erred in making findings concerning the aggravation of claimant's pre-existing condition because there was no disputed issue framed concerning aggravation. The pertinent disputed issue, "Is the Claimant's Syrx condition and symptomatic, previously compensated hydrocephalus a result of the compensable injury of (date of injury)," clearly embraces the extent or scope of claimant's compensable injury, be such an immediate harm or damage or the aggravation of a pre-existing condition. We note there was no response to the benefit review conference in evidence, clarifying the issue or seeking the addition of an issue.

We similarly disagree with the carrier that pursuant to Home Insurance Company v. Davis, 642 S.W.2d 268 (Tex. App.-Texarkana 1982, no writ), a compensable injury may not consist of the aggravation of a pre-existing, non-occupational disease or condition. The Davis decision stated at page 269 that "[a]ggravation, acceleration, or excitement of a non-occupational disease does not constitute a compensable injury under our Workers' Compensation Act. [citations omitted]." The Appeals Panel has previously held that a compensable injury may consist of the aggravation of a pre-existing condition. See e.g. Texas Workers' Compensation Commission Appeal No. 91039, decided November 15, 1991, a case involving an employee who attempted to prove (unsuccessfully) that he aggravated a pre-existing heel spur when he stepped on a rock at work, which stated that "[c]ase law authorizes recovery of workers' compensation benefits for aggravation of pre-existing diseases or conditions. Gill v. Transamerica Insurance Company, 417 S.W.2d 720, (Tex. Civ. App. - Dallas 1967, no writ)." The decision in Appeal No. 91039, recognizing that the employee was not contending that his heel spur was caused by his

work but rather that his accident at work aggravated the pre-existing heel spur, stated that "[a]n injury that aggravates a pre-existing bodily infirmity is compensable provided an accident arising out of employment contributed to the incapacity. INA of Texas v. Howeth, [755 S.W.2d 534 (Tex. App.-Houston [1st Dist.] 1988, no writ)]." See also United States Fidelity & Guaranty Company v. Bearden, 700 S.W.2d 247, 250 (Tex. App.-Tyler 1985, no writ), a case involving the on-the-job aggravation of the employee's pre-existing lung diseases, where the court declined to decide "the correctness of the dictum found in Home Insurance v. Davis, 642 S.W.2d at 629, and Texas Employers' Insurance Association v. Schaefer, 598 S.W.2d at 928-929," In Howeth, *supra*, the employee lifted a heavy case at work and felt pain in her back. Medical tests revealed that the employee had a sacral tumor, and a surgical procedure removed a "ganglioneuroma" tumor and cysts from the employee's spine which had been present since birth. The court affirmed the judgment for the employee's workers' compensation benefits, stating at pages 536-537 that "[it is not required that the injury sustained in the course and scope of employment be the sole cause of disability, and a pre-disposing bodily infirmity will not preclude compensation. [Citations omitted.] The extent and duration of the disability received from an injury is at best an estimate, which must be determined by the trier of fact from all pertinent evidence. [Citation omitted.] An injury that aggravates a pre-existing bodily infirmity is compensable provided over-exertion or an accident arising out of employment contributes to the incapacity. See Baird, 495 S.W.2d at 207. It is enough if it is a cause, even though there were other causes. *Id.*" The Howeth court went on to state that it "need not address whether the holding in Home Ins. Co. v. Davis, [citation omitted] (aggravation, acceleration, or excitement of a non-occupational disease does not constitute a compensable injury under the Act) applies because of INA's failure to plead a sole cause, and because the disease was an incident to an injury." Article 8306, § 20."

We see the evidence as sufficient to support the hearing officer's findings that claimant's pre-existing hydrocephalus condition was neither manifested nor was she personally aware she had the condition prior to falling at work on (date of injury), (she testified to that effect). We regard the expert evidence, namely the several statements of Dr. BCB and Dr. JH, set forth above, as sufficiently supportive of the findings that her hydrocephalus condition was aggravated by her fall; and that her medical records established a causal connection between her employment and the hydrocephalus condition she now has as a result of her fall at work. While there were medical reports that did not connect the fall, there were no medical opinions to the effect that claimant's fall did not aggravate her pre-existing conditions. Though not expressed in terms of "reasonable medical probability," the reports of Dr. BCB and Dr. JH, referenced earlier in this opinion, satisfy the requirement for expert evidence of causation. See Stodghill v. Texas Employers Insurance Assn. 582 S.W.2d 102 (Tex. 1979); Lucas v. Hartford Accident and Indemnity Company, 552 S.W.2d 796 (Tex. 1977); Atkinson v. United States Fidelity Co. 235 S.W.2d 509 (Tex Civ. App.-San Antonio 1950, writ ref'd n.r.e.). These findings are sufficiently supportive of the conclusion that claimant's syrx condition and hydrocephalus are a result of her compensable injury of (date of injury). We do not view the findings challenged by the carrier as so against the great weight and preponderance of the

evidence as to be manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 244 S.W.2d 660 (Tex. 1951).

As authority for the requirement of expert evidence to prove that syringomyelia was caused by the employment and in support of its contentions on appeal concerning the insufficiency of the evidence, the carrier cites Texas Workers' Compensation Commission Appeal No. 94107, decided March 10, 1994. In that case, the Appeals Panel affirmed the hearing officer's decision that the employee's syringomyelia was neither caused nor aggravated by his on-the-job injury. However, that case is factually distinguishable from the case before us. Not only was there not a recent sudden trauma connected to the onset of the syringomyelia symptoms, as we have here, but there was conflicting medical opinion as to whether that employee's pre-existing syringomyelia was aggravated by the employment. The employee had been putting drains in buildings for about three weeks to a month and carrying heavy pipes, developed burning and numbness in his arms, and was initially diagnosed and surgically treated for carpal tunnel syndrome. The Appeals Panel observed that the hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), and as the fact finder resolves conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), including medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

The carrier also cites and attempts to distinguish an unpublished decision, Texas Workers' Compensation Commission Appeal No. 94362, decided May 12, 1994, a case where the hearing officer determined that the employee's compensable injury included hydrocephalus and the Appeals Panel affirmed. The employee in that case suffered an electrical shock at work, felt back pain and headaches, and was initially diagnosed with lumbar strain and radiculitis. Continuing complaints of headaches, dizziness and memory loss led to a diagnosis of hydrocephalus. The designated doctor determined that the employee's work accident and his herniated lumbar disc and hydrocephalus were probably related and assigned an IR for both injuries. Noting that the Appeals Panel has held that "an aggravation of a pre-existing condition can be a compensable injury in its own right [Texas Workers' Compensation Commission Appeal No. 94066, decided February 25, 1994]," the Appeals Panel stated that "[w]hether the claimant's accident caused the hydrocephalus or aggravated a pre-existing asymptomatic hydrocephalus is a question of fact."

Finally, we agree with the hearing officer's rejection of the designated doctor's second report that claimant reached MMI on March 14, 1994, with an IR of 13%. However, we do not agree with the hearing officer's analysis that the designated doctor's report is against the great weight and preponderance of the other medical evidence. Rather, we see the designated doctor's second report as fatally flawed because it failed to determine whether claimant has reached MMI for her syringomyelia condition and hydrocephalus (which have been determined to have resulted from her compensable injury of (date of

injury)) and if so, to assign an IR for such conditions if claimant has permanent impairment therefrom. See *generally*, Texas Workers' Compensation Commission Appeal No. 94435, decided May 27, 1994, which discusses cases where designated doctors did not evaluate the entirety of employee's compensable injuries.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge