APPEAL NO. 950330

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 26, 1995. The sole disputed issue was the claimant's correct impairment rating (IR). The hearing officer determined in accordance with the report of a designated doctor selected by the Texas Workers' Compensation Commission (Commission) that the claimant's IR was five percent. The parties stipulated that the claimant reached maximum medical improvement (MMI) on August 15, 1994. The appellant (claimant herein) appeals arguing that the designated doctor erred in failing to rate the claimants "post traumatic stress disorder with anxiety and depression." The respondent (self-insured city) replies that the stress disorder was not part of the compensable injury and that the decision and order of the hearing officer should be affirmed.

DECISION

We affirm.

The hearing in this case was brief and the decision rendered on the documentary evidence only. The parties stipulated that the claimant sustained "a compensable injury" on _____. Shortly after the stipulation, the claimant proceeded to closing argument in which she challenged the five percent IR because no rating was assigned to the anxiety and depression. The self-insured city, in closing argument, stated that the designated doctor had all the medical evidence and considered the injuries described in assigning an IR.

An Initial Medical Report (TWCC-61) of Dr. B, the claimant's treating doctor, reflects a visit of October 25, 1993, and contains seven separate diagnoses of spine pathology and an eighth diagnosis of "post-traumatic stress disorder with anxiety and depression." All his intervening reports as well as his last report in evidence, which was dated December 20, 1994, contain the same eight diagnoses without further description of the cause of the anxiety and depression. In a letter of June 22, 1994, to the carrier, Dr. B expresses his disagreement with Dr. A's IR (requested by the carrier and discussed below) and states:

> [Claimant] came in hobbling and walking with the assistance of devices, including a cane and bent over, as well as significant depression . . . She is [now] walking better with a very slight limp and is very much encouraged . . . The patient needs a few more months of care . . . I do not think she has reached maximum medical improvement as of yet . . . I think her [IR] is higher than that given by [Dr. A] as well.

On June 10, 1994, Dr. A, at the request of the self-insured city, completed a TWCC-69 in which he assigned a nine percent IR. Based on his examination of the claimant and review of the medical records, including Dr. B's records, Dr. A diagnosed lumbosacral sprain, mechanical back with pre-existing spina bifida, and spondylosis and S1

radiculopathy. He agreed that the claimant had "anxiety and depression problems" which caused her to markedly exaggerate her back complaints. He concluded that with the settlement of her case, the emotional stress associated with these proceedings will be eliminated. He also reported that she was sent for a psychiatric evaluation, but none was introduced into evidence. The nine percent IR consisted of a rating for a specific disorder of the lumbar spine and for radiculopathy. Range of motion testing was considered invalid.

It was not disputed that Dr. W was a designated doctor selected by the Commission. In a TWCC-69 of August 15, 1994, she assigned a five percent IR based solely on a specific disorder of the spine. Dr. W diagnosed chronic recurrent back pain and left buttock pain. She invalidated range of motion measurements because in her opinion, based on her observations of the claimant, there were "only voluntary limitations of her range of motion. . . ." She found no objective evidence of neurologic loss and suggested that the claimant had "psychosocial barriers to recovery" which were manifested in "significant symptom magnification and voluntary guarding of ranges of motion."

The brevity of the hearing below has not well served the review of this case. An IR can only be given for a permanent compensable injury. Sections 401.001(23) and (24). Where there is a dispute over the extent of the injury, the hearing officer ultimately must decide what injuries are compensable. Texas Workers' Compensation Commission Appeal No. 950018, decided February 17, 1995. Little purpose was served in this case by a stipulation of "a compensable injury" without further attempt to define what the injury was especially when the focus of the dispute was whether a rating should have been given for an alleged psychological component of the injury. The report of the benefit review conference was not particularly enlightening on the real nature of the dispute because it states the claimant's position as contesting Dr. W's IR because it had no component for loss of range of motion.

One of the issues in Texas Workers' Compensation Commission Appeal No. 941333, decided November 21, 1994, was the claimant's correct IR. In that case, the carrier argued that the injury extended only to the back and not the knee, but did not want to add the issue of extent of injury and stated that it was prepared to go forward on the IR issue. In so doing, it implied that at a later time it could raise the extent of injury issue. The hearing officer affirmed a certification of an IR that included both injuries. The carrier appealed arguing that the hearing officer could have determined the IR without reaching the extent of injury. In affirming and disagreeing with the carrier on this point, the Appeals Panel stated:

> . . . the extent of injury was necessarily reached by the hearing officer in this case. We believe it was incumbent upon the carrier to activate any dispute over the extent of the injury well before any dispute is formulated on the correct IR, which must be based upon the compensable injury; to hold

> otherwise would be to render our hearing officer's decision on impairment in this case advisory or conditional. If the carrier still intended to mount an active dispute as to whether the knee was part of the compensable injury in this case, it was waived once the issue was essentially adjudicated through inclusion of the knee as part of the compensable injury here for purposes of impairment.

If, as was apparent in the case now appealed, the position of the parties depended significantly on the extent of the compensable injury, they would have been well-advised, consistent with our opinion in Appeal No. 941333, *supra*, to have clearly articulated this at the CCH and to have presented their case accordingly instead of relying on a vague stipulation that the claimant sustained a compensable injury without more. *See* Texas Workers' Compensation Commission Appeal No. 950140, decided March 8, 1995, for a discussion of the concept that certain "threshold issues" may or may not "separately go through the dispute resolution process."

Only Dr. B made a diagnosis of post-traumatic stress disorder and depression. He included this diagnosis consistently in his reports, but offered little to no explanation of how this psychological condition related to the lifting incident at work that caused the claimant's back injury, or, more importantly, that this condition was permanent. As we observed in Texas Workers' Compensation Commission Appeal No. 93539, decided August 12, 1993, the mere assertion of a medical condition does not automatically mean that permanent impairment has resulted, nor is a designated doctor's opinion overcome simply by a diagnosis that certain conditions exists. *See also* Texas Workers' Compensation Commission Appeal No. 941643, decided January 13, 1995. Dr. W was aware of Dr. B's reports and found some evidence of what she called "psychosocial barriers to recovery." She obviously either did not consider this condition work related or did not consider it permanent because she did not provide a rating for it. This is consistent with Dr. A's view which could be interpreted to mean that he thought the claimant's anxiety and depression were the product of going through the workers' compensation process and would resolve once her case was decided.

The hearing officer afforded presumptive weight to Dr. W's report under Section 409.125(e). In Texas Workers' Compensation Commission Appeal No. 94392, decided May 13, 1994, the sole disputed issue was the correct IR. In adopting the report of the designated doctor over the objection of the carrier that the doctor rated more than the compensable injury, the hearing officer found that the compensable injury extended to the body parts rated by the designated doctor. The Appeals Panel affirmed noting that the presumptive weight of the designated doctor did not apply to questions about the extent of injury. In that case as well as in the case now appealed, there is no indication or suggestion that the hearing officer improperly afforded presumptive weight to the designated doctor's opinion about the extent of the injury. We are satisfied that the question of whether the claimant had a permanent, compensable mental or psychological

injury was effectively decided on the basis of a preponderance of the evidence. While the hearing officer's statement that "no evidence was presented that the Claimant had suffered a mental stress injury in order for her to receive an impairment rating," was inartfully worded in the sense that no mental trauma injury was ever claimed, *see* Section 408.006, it is clear to us that the hearing officer determined that the claimant's anxiety and depression were not part of the injury as a disease naturally resulting from the claimant's back injury. Having reviewed the record in this case, we are satisfied that the decision and order of the hearing officer are supported by sufficient evidence. Under our standard of review, there is no sound basis for reversing the hearing officer. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge