

APPEAL NO. 950749
FILED JUNE 21, 1995

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), a contested case hearing was held on February 27, 1995. He (hearing officer) determined that the appellant's (claimant) current psychological problems were not a direct result of her _____, compensable injury and therefore not compensable. He also determined that the respondent (carrier) timely disputed the compensability of the "psychological injury." Claimant appeals the decision stating she believed the hearing officer was unfair in his decision. The carrier urges that there is sufficient evidence to support the hearing officer's decision and questions the jurisdiction of the hearing officer and Appeals Panel to consider the case.

DECISION

Affirmed.

First, we determine we have jurisdiction in this case over both the subject matter and the parties. Contrary to the case cited by carrier, Texas Workers' Compensation Commission Appeal No. 931042, decided December 28, 1993, where a jurisdictional issue involved a subject matter over which we had determined we did not have jurisdiction (a medical treatment dispute and related expenses), this case involves an asserted injury, which if meritorious, would qualify for benefits. It appears to us that what the carrier is urging, in essence, is that the issue of a psychological injury has already been effectively decided, that is, *res judicata*, and had become final as a result of a previous contested case hearing between the parties. We do not find that to be the case even though in a previous contested case hearing the injury being rated for impairment rating purposes did not include the psychological injury asserted here, and which allegedly arose later and as a direct result of the original injury. In this regard, the hearing officer determined that the psychological injury was not raised until July 19, 1994, and that the carrier timely contested the psychological injury on September 15, 1994.

The claimant sustained a compensable back injury on _____, while assisting a patient and has apparently not worked since. She went through a considerable period of conservative treatment including epidural steroid injections and, after referral for several medical opinions, was scheduled for surgery in September 1992 but decided against it. According to her testimony and medical record, she has continued to experience pain. She also subsequently complained of carpal tunnel syndrome as a part of her injury. Earlier in her treatment she was referred to a Dr. H for a psychological evaluation. In a report dated July 24, 1991, Dr. H referred to the claimant's prior "psychosocial stressors," which included incidents of child abuse, and stated that the claimant denied any current significant depression although she had a fear of her health being permanently affected. Dr. H offered his diagnosis of "Adjustment Disorder With Mixed Emotional Features" and stated that the results do not indicate the presence of a typical chronic pain profile and felt that "psychotherapeutic or counseling services are not necessary at the present time."

A more detailed history of the claimant's course of treatment is set out in Texas Workers' Compensation Commission Appeal No. 94210, decided March 31, 1994. In that contested case hearing, the issue involved the claimant's impairment rating (IR) which a Commission-selected designated doctor had determined to be 13%. The case was remanded on a matter of whether the hearing officer correctly rejected the designated doctor's IR inasmuch as it did not include a rating for a claimed carpal tunnel syndrome injury. In our decision on remand, Texas Workers' Compensation Commission Appeal No. 94999, decided September 6, 1994, we affirmed the hearing officer's decision that the claimant's IR was 13% as originally determined by the designated doctor.

The claimant states she continued to experience pain, that she became very frustrated with the resolution of her case with the carrier and the Commission and that she became depressed. The particular psychological injury that the claimant asserts she is suffering is not clear from the evidence. In an exhibit in evidence setting out a list of "My Afflictions" by the claimant dated 1/23/93, there is no mention of any psychiatric or psychological injury or problem. In the fall of 1994, Dr. P, her then treating doctor, referred her to a psychiatrist. This was not approved by the carrier. In his November 3, 1994, letter Dr. P indicated that the claimant was "at the end of her psychological tether" and stated his opinion that her "present situation, at least in part, is the direct result of the severe stressors that she has been under in dealing with her compensation problem, especially with aspects of her compensation issue that have not gone to her benefit." Dr. P also stated in a subsequent letter that referral to the psychiatrist for psychological/psychiatric evaluation and treatment is both reasonable and necessary in his medical opinion. Later he stated that following her injuries:

the stresses brought upon her by her injury and inability to work along with the difficulties that she has faced all along the way in diagnosis and treatment has created such a stressful situation that her emotional health has been severely damaged. The damage is from the worker's compensation injury. Without this injury, there would have not been this damage. The injury is directly responsible for her difficult emotional situation at this time.

The hearing officer found that the claimant did not raise an issue of psychological problems during the course of her treatment or during the prior contested case hearing and that her psychological problems, "to the extent they exist," are due to her frustration with attempts to obtain further benefits and concluded that her current psychological problems are not a direct result of the _____, injury and not compensable. We find this case to be similar in pertinent part to Texas Workers' Compensation Commission Appeal No. 94591, decided June 22, 1994. That case involved a back injury and a subsequent claim of a mental trauma injury arising therefrom. In upholding the denial of benefits for the mental trauma injury in Appeal 94591, we stated:

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].

Under the protracted circumstances giving rise to this claim for a psychological injury, the testimony of the claimant about her frustrations in attempting to obtain additional benefits that she believes were due her and the conflicting medical reports about the development of any possible psychological condition, we conclude there was a sufficient evidentiary basis to support the determinations of the hearing officer. Although the claimant may not have experienced a psychological problem but for the fact that a back injury occurred in _____, and set in motion a protracted dispute resolution process, this is not alone a sufficient basis to conclude that an additional compensable injury has occurred. The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Section 410.165(a). He 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). Only if his determinations are found to be so against the great weight and preponderance of the evidence as to be clearly wrong or unjust would there be a sound reason to disturb his decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. We do not find that to be the situation in this case. Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge