

APPEAL NO. 960160

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 15, 1995, in _____, Texas, with (hearing officer) presiding as hearing officer. The hearing officer considered the four issues before him at the CCH and determined that:

- (1) the compensable injury of the appellant (claimant) was not a producing cause of claimant's alleged psychiatric problems;
- (2) the date of maximum medical improvement (MMI) was July 19, 1993;
- (3) claimant's impairment rating (IR) was 14%, and
- (4) claimant's compensable injury extended to his cervical spine.

On appeal, claimant contends the hearing officer erred in determining that:

- (1) claimant's compensable injury was not the producing cause of his alleged psychiatric problems;
- (2) claimant reached MMI on July 19, 1993; and
- (3) he had a 14% IR because the designated doctor failed to rate claimant's cervical spine and psychiatric problems.

Respondent (carrier) responds that sufficient evidence supports the hearing officer's determinations.

DECISION

We affirm in part and reverse and remand in part.

Claimant testified that he injured his back while fixing a truck for the (employer). He said or indicated that he also hurt his arm, head, shoulder blade, "mid-cervical collar," and upper spinal column. The parties stipulated that on [Date of Injury], claimant sustained a compensable injury. Claimant said he treated with Dr. B, that it hurts too much to move his arm and shoulder, and that he cannot work.

Claimant first contends that the hearing officer erred in determining that claimant's compensable injury was not a producing cause of claimant's psychiatric problems. In the decision and order, the hearing officer determined that claimant did not establish that he had any psychiatric problems or that his compensable injury caused any psychiatric problems. In the discussion portion of the decision and order, the hearing officer said that claimant did not articulate any psychological problems other than a general inability to accept his situation and frustration because of his inability to work.

Claimant testified that he felt he could not "rely" on himself because of his inability to work. He said he had not been able to accept his physical situation and said he was frustrated because of that and because of the "system." He said his injury affected him mentally because of depression and stress and said that he has trouble sleeping and eating. He said he cannot sleep because he is worried and he has trouble eating because his body hurts and he is always thinking about his situation. He denied that his injury was traumatic and said he did not need hospitalization for mental illness. Claimant indicated that Dr. W, the designated doctor selected by the Texas Workers' Compensation Commission, told him he would not evaluate him until he had treatment for emotional problems. Dr. W certified that claimant reached MMI in 1993, but in a March 20, 1995, report, Dr. W said, "I believe the patient is in need of a psychiatric evaluation including MMPI testing by an independent evaluator."

Under the 1989 Act, the claimant has the burden of proving that he sustained a compensable injury and the extent of his injury. Texas Workers' Compensation Commission Appeal No. 950537, decided May 24, 1995. The 1989 Act defines injury, in pertinent part, as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). This latter concept has been described as the "naturally flowing consequences" of an original injury. See Texas Workers' Compensation Commission Appeal No. 94844, decided August 15, 1994. It has also been held that the immediate effects of an injury are not solely determinative of the nature and extent of that injury and that the "full consequences of the original injury . . . upon the general health and body of the workman are to be considered." *Texas Employers' Insurance Association v. Thorn*, 611 S.W.2d 140 (Tex. Civ. App.-Waco 1980, no writ), quoted in Texas Workers' Compensation Commission Appeal No. 94232, decided April 11, 1994. Existence and extent of injury are fact questions for the hearing officer. Texas Workers' Compensation Commission Appeal No. 951959, decided January 3, 1996.

The hearing officer is the sole judge of the weight and credibility to be given to the evidence and the relevance and materiality to assign to the evidence. Section 410.165(a). As the fact finder, the hearing officer is charged with the responsibility to resolve the conflicts in the evidence, including the medical evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer may believe all, none, or any part of any witness's testimony and may properly decide what weight he should assign to the evidence before him. *Campos, supra*. We will not substitute our judgment for the hearing officer's where his determinations are supported by sufficient evidence. *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986).

In this case, the hearing officer weighed the evidence and determined that claimant did not have psychiatric problems. Whether claimant had compensable psychiatric problems was a fact question for the hearing officer. Appeal No. 951959, *supra*. The hearing officer could decide to believe all, none, or any part of any witness's testimony and properly decided what weight to give to the evidence. *Campos, supra*. After reviewing the evidence, as set forth above, we conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986).

Claimant also contends that the hearing officer erred in determining that his date of MMI was July 19, 1993, as certified by Dr. W. Claimant asserts that the date of MMI could not be determined until the issue of claimant's psychiatric condition is resolved. Again, the hearing officer determined that claimant did not have psychiatric problems related to his injury. Therefore, claimant's assertion that he is not at MMI because of psychiatric problems is without merit. See Texas Workers' Compensation Commission Appeal No. 94081, decided March 10, 1994.

Claimant contends that the hearing officer erred in determining that claimant's IR was 14% because this IR did not include a rating for his cervical spine and psychiatric problems. We have held that the hearing officer's determination that claimant did not sustain psychiatric problems due to his compensable injury is not against the great weight and preponderance of the evidence. Accordingly, the hearing officer did not err in failing to ask the designated doctor to rate claimant's impairment for a psychiatric condition. See Appeal No. 94081, *supra*.

Regarding the cervical problems, an October 26, 1992, MRI report states that claimant has a prominent bulge at C5-C6 and a central disc herniation sufficient to contact the anterior margin of the spinal cord at C4-C5. A September 8, 1993, medical report from Dr. A states that claimant has cervicothoracic strain, cervical discogenic syndrome, and a cervical herniated disc. Dr. B also diagnosed claimant with cervical disc disease and cervical strain in April 1993. In a July 19, 1993, report, Dr. W reported that claimant said his neck discomfort had "settled down," but noted that claimant said he had numbness and cramping in his shoulder and arm. In a March 20, 1995, follow-up medical report, Dr. W reported that:

- (1) claimant reported severe pain in his cervical spine;
- (2) an MRI of his cervical spine showed "multiple bulging discs, none of which impinge on the cord;" and
- (3) claimant's cervical strain problems, but not the bulging discs, are part of his original injury.

In his July 22, 1993, Report of Medical Evaluation (TWCC-69), Dr. W certified MMI and IR and indicated that he gave claimant a whole person IR based on his "right upper extremity" impairment.

The hearing officer determined that claimant's injury included an injury to his cervical spine and that Dr. W's IR included the cervical spine. It appears possible that claimant had "an unoperated intervertebral disc or other soft tissue [lesion]" with a "medically documented injury and a minimum of six months of medically documented pain." However, it is not clear whether this is from the compensable injury. The hearing officer should seek clarification about whether Dr. W specifically found no impairment regarding the cervical spine under Table 49, of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) for an unoperated intervertebral disc or other soft tissue lesion with a medically documented injury and a minimum of six months of medically documented pain. We remand this case to the hearing officer for such clarification.

We affirm that part of the hearing officer's decision and order in which the hearing officer determined that claimant's compensable injury was not a producing cause of his claimed psychiatric problems and that claimant reached MMI on July 19, 1993. We remand this case for clarification regarding claimant's IR and his cervical spine problems.

We affirm in part and reverse and remand in part the decision and order of the hearing officer.

Judy L. Stephens
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Tommy W. Lueders
Appeals Judge