

APPEAL NO. 961449
FILED SEPTEMBER 9, 1996

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 13, 1996. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) did not sustain his burden of proving that his psychological condition was the result of the compensable injury he sustained on _____. In his appeal the claimant argues that hearing officer's decision is contrary to the great weight and preponderance of the evidence. In its response, the respondent (carrier) urges affirmance, pointing to the evidence it believes is sufficient to support the hearing officer's decision and order.

DECISION

We reverse and remand.

It is undisputed that the claimant sustained a compensable injury on _____, in the course and scope of his employment with the (employer). The claimant testified that he had been employed by his employer in the maintenance department for over 12 years at the time of his injury. He stated that on _____, he tripped in his employer's parking lot and landed on his left knee and elbow. The claimant testified that he underwent two left shoulder surgeries and a left knee surgery as a result of his injury and that those procedures were not effective in alleviating his pain. On August 16, 1993, the claimant was terminated by his employer "due to physical inability to do the job and to return in a timely manner." On cross-examination, the claimant acknowledged that he had had a prior back injury that resulted in three back surgeries. In addition, the claimant conceded that in the period between 1988 and 1992, he was treated by Dr. F for chronic low back pain with Tylenol 4 and Valium.

Dr. B, an orthopedic surgeon, determined in July 1995 that the claimant's pain medication management should be turned over to a single doctor because the claimant was requiring increasing amounts of pain medication and Dr. B believed he was receiving pain medication from more than one doctor. Dr. B recommended that Dr. K take over the claimant's pain management. In August 1995, the claimant had a second shoulder surgery, an anterior acromioplasty, which was performed by Dr. B.

Dr. K testified that he is board certified in psychiatry and pain medicine. In addition, he stated that he was a member of the task force that developed the mental health treatment guidelines under the Texas Workers' Compensation Act. He stated that in the summer of 1995 the claimant was referred to him by Dr. B because Dr. B was concerned that the claimant had developed chronic pain syndrome, was narcotic dependent, and that the claimant's depression was blocking his recovery. Dr. K stated that, after his initial consultation with the claimant, he determined that the claimant had chronic left shoulder, elbow and knee pain, depression, imminent problems of narcotics dependency and anxiety

attacks. Dr. K stated that the claimant's problems were caused by his work injury, noting that the injury caused continuous pain and disability, inability to function in his usual role in life, destruction of his vocational, familial and recreational relationships and financial troubles. Dr. K stated that initially the claimant was treated by changing his medication for pain and anxiety to medications that would not cause tolerance and dependency problems and by introducing antidepressant medication. Dr. K noted that, at first, the claimant responded to that treatment but thereafter his condition deteriorated to the point that his depression became more severe and he became more disorganized and confused in a fashion typical of psychosis. Thus, Dr. K testified that, in November 1995, the decision was made to hospitalize the claimant in the psychiatric unit of (Hospital). The claimant remained hospitalized for six months and was discharged to an outpatient psychiatric program in April 1996. Finally, Dr. K testified that the claimant's psychological and emotional problems were causally related to the _____, compensable injury.

On cross-examination, Dr. K acknowledged that he was concerned by the claimant's history of having used cocaine, amphetamines and LSD and with the claimant's resumed use of marijuana and his alcohol abuse. Dr. K also noted that he was concerned by the history of psychiatric disorders in the claimant's family. In addition, Dr. K stated that he was troubled by the claimant's prolonged use of prescription narcotics. He stated that there are risks associated with discontinuing narcotics; however, he stated that he did not believe that the claimant's psychological problems in this case were precipitated by the discontinuance of narcotics. Dr. K testified that he had diagnosed the claimant with bipolar disorder and that, although the claimant's condition was partially due to the disruption of his family life, the loss of his job and financial concerns, Dr. K believed that based upon a reasonable medical probability the claimant's bipolar disorder was caused by trauma, and more specifically, the claimant's work-related injury of _____.

Dr. B likewise opined that the claimant's depression was causally related to his compensable injury. In a report dated December 13, 1995, Dr. B stated:

My impression is that [claimant] will require a total shoulder arthroplasty in the future to complete [sic] alleviate his shoulder pain, though, as you know, in patients with chronic pain syndrome, even definitive surgical treatment can result in persistent pain. I feel strongly that the depression from which [claimant] was suffering was work related and that [Dr. K's] life saving maneuver in hospitalizing [claimant] was reasonable and necessary medical care.

The carrier submitted the opinion of Dr. G, who completed a records review and did not examine the claimant. Dr. G concluded:

it is my medical opinion that [claimant's] current psychiatric disorder(s) and condition(s) are not a direct result of the "trip and fall accident." At that time, there is no documentation of causality that would support the current psychological condition(s).

In so concluding, Dr. G emphasized that, in addition to an on-the-job injury and three surgeries, there were many other stressors in the claimant's life which included financial problems, marital discord, a new baby in the house and alcohol and substance abuse.

In the discussion section of her decision, the hearing officer noted that Dr. G opined that the claimant's current psychiatric disorders and conditions were not a direct result of his compensable injury and quoted at length from Dr. G's report. Thereafter, the hearing officer stated:

Furthermore, the Appeals Panel has held that although the Claimant may not have experienced a psychological problem, but for the fact that an injury occurred, this alone was not a sufficient basis to conclude that an additional compensable injury occurred. Appeals Panel 950749. The Claimant has not shown by a preponderance of the evidence that he suffered a mental trauma injury that arose as a natural result of the _____, knee and shoulder injury or as an independent mental trauma injury on _____.

After carefully reviewing the record and in light of the above-quoted language in the hearing officer's decision, we are concerned that the hearing officer did not apply the proper standard for determining whether the claimant's psychological condition is the result of his compensable injury. In Texas Workers' Compensation Commission Appeal No. 950749, decided June 21, 1995, the Appeals Panel stated "[a]lthough the claimant may not have experienced a psychological problem but for the fact that a back injury occurred in February 1991, 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." Appeal No. 950749 quoted the prior decision of Texas Workers' Compensation Commission Appeal No. 94591, decided June 22, 1994, which in turn quoted Texas Employers Ins. Ass'n. v. Wilson, 522 S.W.2d 192, 195 (Tex. 1975), as follows:

[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*.

The source of our concern herein is that, in citing the "but for" language of Appeal No. 950749 without putting it in the context of the Wilson case, the hearing officer appears to have applied an incorrect standard to the issue of the compensability of the claimant's psychological condition. Admittedly, if the claimant's psychological problems are traceable to the "circumstances arising out of and immediately following the injury" as opposed to being the "result of the injury," they are not a part of the compensable injury. However, if the claimant's psychological condition is causally related to the compensable injury, it too is compensable. The fact that there may be more than one cause of the claimant's psychological condition and that there are other stressors in this case beyond the claimant's chronic pain and multiple failed surgeries does not preclude a finding of

compensability, provided that there is a causal connection between the compensable injury and the claimant's psychological problems. That is, in order to establish that his bipolar disorder is compensable, the claimant must demonstrate that the _____, injury was a producing cause thereof. Texas Workers' Compensation Commission Appeal No. 961122, decided July 26, 1996; Texas Workers' Compensation Commission Appeal No. 960160, decided March 8, 1996. In relying upon the language of Appeal No. 950749, the hearing officer appears to reject the premise that if the claimant proves that his compensable injury is a producing cause of his psychological condition, that condition is likewise compensable. However, our existing precedent is contrary to that position; therefore, we reverse the hearing officer's decision and order and remand the case for a determination of whether the claimant has sustained his burden of proving that his compensable injury is a producing cause of his bipolar disorder.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file the request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's division of hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Elaine M. Chaney
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Alan C. Ernst
Appeals Judge