

APPEAL NO. 970730
FILED JUNE 9, 2007

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 March 3, 1997. The issues at the CCH were whether the compensable injury sustained by the respondent (claimant) included her depressive disorder. The hearing officer determined that the compensable injury sustained on _____, included the claimant's depressive disorder. The appellant (carrier) appeals several findings of fact and a conclusion of law urging that the decision is based on insufficient evidence and against the great weight and preponderance of the evidence. No response from the claimant is in the file.

DECISION

Not concluding reversible error has been shown or that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, we affirm the decision.

That the claimant sustained a compensable injury to her left knee on _____, when she got up from a chair and twisted her knee and hit it on the inside of a chair is not disputed. Similarly, it is not disputed that the claimant has significant psychological problems described as major depression which has resulted in several hospitalizations. The problem to be resolved was whether the depression condition was causally related to the knee injury of _____, to render it compensable under workers' compensation.

The medical records in evidence show that the claimant had multiple injuries to her knees before the incident of _____. She testified that she thought that she had six or seven prior surgeries to her right knee and five to her left knee, apparently including a surgery following the _____, incident. In any event, at the time of the injury on _____, the claimant was working as a charge nurse or a floor nurse. She continued working the day she reported the matter and then saw a doctor a couple of days later. She was subsequently taken off work, had surgery and rehabilitation and then was returned to light duty. She worked at one position for several weeks and then worked in a quality management position (involving morbidity and mortality charts) until she quit on February 14, 1995. She stated that her doctor (psychiatrist) advised her to leave the position and that she also had conflicts with her supervisor. The claimant subsequently worked at another job for a period of time.

The claimant testified that in about November 1994, her treating orthopedist Dr. H indicated to her that she could not return to duty as a floor nurse. At that time she decided to go to a psychiatrist on her own. She saw Dr. F, who she knew professionally, in November 1994. She was hospitalized for two to three weeks for Depressive Disorder in March 1995. She stated that she was also hospitalized because of depression in September 1996, November 1996, and January 1997. She stated that to her knowledge

she did not have depression prior to the _____, injury and that the first onset was November 1994. She stated that she would need to have knee replacement surgery but they would not do it until she was 40. The claimant also acknowledged that there were a significant number of stressors in her life prior to the knee injury of _____. She acknowledged that she had had a number of knee injuries prior to _____ and that not being able to play softball in college as a result affected her considerably. She admitted that she had wanted to commit suicide on several occasions in the past (before 1993), and one such time was when she overdosed on pills after breaking-up with a companion/lover. However, she stated she was not hospitalized and did not seek out psychiatric care at the time. Other stressors included instances of being molested in childhood and addiction to pain medication. She also stated that at the time she quit her light-duty position with employer, she had a conflict with her supervisor. She stated that if she could have a knee replacement and go back to work as a floor nurse she would do it.

The claimant presented letter reports from the doctor who treated her knee injury, Dr. H, and two psychiatrists who have treated her for depression, Dr. F and Dr. L. Dr. H states in a June 24, 1996, letter that the claimant has degenerative arthritis in both knees which is painful and reduces her ability to function and opines that "I am sure that this has had an effect upon her psychological and emotional state and am not surprised if this would lead to some degree of depression." An admission report dated April 12, 1995, by Dr. F indicates that the claimant has multiple stressors in life and that she reported increasing bouts of depression over the past four years. Dr. F, in a letter dated June 29, 1995, noted that the claimant's not being able to function as a unit nurse created a grief reaction from not being able to interact with people and that he has recommended that she stop her new work situation (light-duty position) as it was adversely affecting her emotional condition. In a later letter dated May 13, 1996, Dr. F states: "it is my opinion that her current depressive condition was precipitated by her knee injury [not further identified] and the resultant effect on her productivity in life." Dr. L, in a short letter dated December 3, 1996, states that the claimant's "depression in part seems to be linked to loss of function and ability to work secondary to knee injuries and surgeries."

In addition to the claimant's medical records which describe the various injuries, treatments, and stressors in the claimant's life, the carrier introduced a report from a clinical psychologist, Dr. HH, who examined the claimant, the medical records which set forth her history, and states in a February 27, 1997, report that the records indicated the claimant "has been suffering severe depressive disorders, with or without psychotic symptoms, and characterologic disorder, which is chronic and long standing and predates any injury." Dr. HH renders an opinion that the claimant's "psychiatric condition predated her injury and has resulted in a far more disabling psychiatric condition than would be expected following a knee injury that disables her from work as a floor nurse."

Among her many findings, including her finding that the claimant's compensable injury to her left knee on _____, was a producing cause of her depressive disorder, the hearing officer found that Dr. HH was a psychologist and that his opinion was therefore not medical evidence. As one of its grounds for appeal, the carrier cites this last finding and

urges that it is error as a matter of law. It appears that the hearing officer may have been distinguishing between the opinions of the medical doctors (physicians) and the opinion of the clinical psychologist in stating the former were medical evidence and the later was not medical evidence. While a physician's records are clearly medical evidence, we have never indicated that reports from other health care providers or other specialists are not "medical" evidence. To the contrary, many specialties may be involved in a given case in assessing physical conditions, e.g. functional capacity reports, reports involving physical therapy, and reports on impairment ratings, etc. These are generally considered a part of the medical evidence in a case. Regarding reports of clinical psychologists, prior cases have treated them as a part of the general category of medical evidence. See Texas Workers' Compensation Commission Appeal No. 950725, decided June 15, 1995; Texas Workers' Compensation Commission Appeal No. 941679, decided February 2, 1995; Texas Workers' Compensation Commission Appeal No. 94495, decided June 9, 1994. Although the hearing officer stated that Dr. HH's report was not medical evidence for what ever distinction she was making, it appears that she considered this evidence in her decision as she makes specific findings concerning Dr. HH's opinion and report. She apparently did not believe it outweighed the other evidence which she concluded was the preponderance of the evidence that the compensable injury sustained by the claimant on _____, includes her depressive disorder.

While there is evidence supporting inferences different from those found most reasonable by the hearing officer, this is not a sound basis for setting aside her findings. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). The existence and the extent of an injury are generally questions of fact for determination by the hearing officer. Texas Workers' Compensation Commission Appeal No. 951959, decided January 3, 1996. We have upheld a hearing officer's factual determination that an injury was not a producing cause of the subsequent psychological condition or a natural flowing consequence. Texas Workers' Compensation Commission Appeal No. 960160, decided March 8, 1996. However, in other cases, we have also affirmed findings that depression caused by a prior injury was compensable where supported by the evidence. Texas Workers' Compensation Commission Appeal No. 961122, decided July 26, 1996. In that case, similar to the one under review, a contrary report by a clinical psychologist was introduced in evidence by the carrier. In Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994, we affirmed a hearing officer's determination that a claimant's preexisting psychological condition was aggravated by her compensable knee injury. And, in Texas Workers' Compensation Commission Appeal No. 951162, decided August 28, 1995, we affirmed a hearing officer's determination that claimant's psychological condition was a partial effect resulting from a compensable injury. In that case, although the claimant had been hospitalized for prior psychological problems, there was evidence that the prior condition was in remission and had resolved at the time of the back and knee injury involved in the case. The appropriate legal standard to be applied in cases involved with follow-on psychological disorders is noted in Texas Workers' Compensation Commission Appeal No. 961449, decided September 9, 1996.

While there was conflict in the evidence, there is medical evidence which can be viewed to support the hearing office's finding that the necessary connection between the depression disorder and the knee injury of _____, was established by the expert evidence of Drs. F and L. And, the fact that the claimant had been successfully working for sometime even after the numerous other stressors contained in the evidence tends to support an inference that any preexisting psychological condition was not the only cause of her current condition. There is some basis to infer that the _____, injury bore at least a partial causal relationship. Applying our standard of review (Texas Workers' Compensation Commission Appeal No. 92083, decided April 16, 1992), we do not conclude that the determination of the hearing officer is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Accordingly, the decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge