

APPEAL NO. 980066

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 December 3, 1997. The appellant (claimant) and the respondent (self-insured) stipulated that the claimant sustained a compensable injury on (injury date 3). The hearing officer determined that the claimant's underlying conditions of depression, anxiety, and phobia were not permanently aggravated by her (injury date 3), compensable injury; that her headaches, hypertension, insomnia, and obesity are not results naturally flowing from the (injury date 3), compensable injury; and that those conditions have not become part of the compensable injury. The claimant appealed, stating her disagreement with a sentence in the hearing officer's Statement of the Evidence, four findings of fact, and two conclusions of law; reviewing evidence favorable to her; and requesting that the decision of the hearing officer be reversed. A response from the self-insured has not been received.

DECISION

We affirm in part and reverse and remand in part.

The claimant testified that she sustained a compensable injury to her back, neck, and knee on (injury date 1); that she experienced depression and anxiety after that injury; that in June 1993 (Dr. E) her treating doctor, referred her to a psychiatrist; that the psychiatrist diagnosed depression and prescribed Prozac and another medication; that the self-insured denied the treatment by the psychiatrist and the medication; that Dr. E wrote prescriptions for the medication prescribed by the psychiatrist; and that after some dispute, the self-insured paid for the medication. The claimant said that she injured her back and neck on (injury date 2), and that she still received Prozac and Xanax after that injury. She testified that on (injury date 3), she opened the door to a booth; the wind caught the door; that the door pulled her out of the booth; that she had pain in her lower back and into her hips, back between her shoulder blades, and neck up into her head; and that she went to Dr. E on November 26, 1996. The claimant stated that prior to the injury in 1996 she was taking medication for depression and anxiety, but that she was able to work; that she had depression after the 1992 injury, but that her depression was escalated after the 1996 injury; that Dr. E referred her to (Ms. H), a psychotherapist, in June 1997; that Ms. H referred her to Dr. (Dr. L), a psychiatrist; and that she saw Dr. L in July 1997 and he diagnosed major depression and panic disorder and changed her medication. The claimant testified that prior to the 1996 injury, she would gain and lose weight and that after the 1996 injury she gained more weight because she could not move.

On November 26, 1996, Dr. E recorded that the claimant was having severe headache pain and pain in her neck, shoulders, mid and lower back, and radiating down her left leg; that her blood pressure was elevated; that examination of the head, eyes, ears, nose, and throat was unremarkable; and that therapy was prescribed. The claimant

received therapy twice a week and in a note dated January 15, 1997, Dr. E recorded that the claimant was having the same pain she reported on November 26, 1996, that her blood pressure was elevated, and that they discussed that weight loss would assist in alleviating some discomfort to the lumbosacral spine and elevated blood pressure. In a note dated January 29, 1997, Dr. E recorded that the claimant had the same pain; that she had gained weight; that her blood pressure had improved; and that she suffered with depression due to constant pain, frustration from lack of mobility, and the limited ability to perform normal daily activities. Notes dated February 12 and 28 and March 21, 1997, contain the same comments about pain and depression and indicate the claimant's blood pressure on those days. In a letter dated June 24, 1997, Dr. E wrote:

It is my professional opinion, [claimant's] headaches, depression, physiological distress and hypertension all are secondary to her back injury and physical limitations associated to the musculoskeletal disorder.

In a letter to the ombudsman assisting the claimant dated September 24, 1997, Ms. H stated that people who experience physical pain frequently experience feelings of depression and that the claimant's depressive symptoms appear to be directly related to her physical pain and discomfort. In a letter dated September 29, 1997, Dr. L stated that the claimant has major depressive disorder and panic disorder and that they aggravate her previous conditions of back pain and headaches.

We first address the determination that the claimant's headaches, hypertension, insomnia, and obesity are not results naturally flowing from the (injury date 3), compensable injury. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer's determination that the claimant's headaches, hypertension, insomnia, and obesity are not results naturally flowing from the (injury date 3), compensable injury are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support that determination of the hearing officer, we will not substitute our

judgment for his and we affirm that determination. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We next address the determination that the claimant's underlying conditions of depression, anxiety, and phobia were not permanently aggravated by her compensable (injury date 3), injury and have not become part of the compensable injury. Injury is defined 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). Impairment means "any anatomic or functional abnormality or loss existing after maximum medical improvement that results from a compensable injury and is reasonably presumed to be permanent." Section 401.011(23). In Texas Workers' Compensation Commission Appeal No. 951313, decided September 20, 1995, the Appeals Panel considered an argument by the carrier and wrote:

Specifically, the carrier references the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (the AMA Guides) at page 236 for the proposition that "to have a legal impact of causation, an aggravation must be substantial and permanent." This is not the correct definition of aggravation for purposes of the 1989 Act. We stated the proper definition of aggravation along with citation to the sources in Texas Workers' Compensation Commission Appeal No. 94517, decided June 14, 1994, as follows:

Injury means damage or harm to the physical structure of the body and such diseases or infections naturally resulting therefrom, or the incitement, acceleration, or aggravation of any disease, or infirmity or harm. [Citations omitted.]

In Texas Workers' Compensation Commission Appeal No. 941052, decided September 19, 1994, the Appeals Panel wrote:

While the aggravation of an injury or pre-existing condition can be an injury in its own right (*see generally* Texas Workers' Compensation Commission Appeal No. 93577, decided August 18, 1993), where the injury resulting from the aggravation has resolved and there remains no permanent impairment flowing therefrom as found by the designated doctor here and accepted by the hearing officer, there is no basis to award any IR [impairment rating] for that injury.

Also see Texas Workers' Compensation Commission Appeal No. 951162, decided August 28, 1995, for a case concerning aggravation of a preexisting psychological problem by a knee injury.

It appears that the hearing officer required that the claimant's depression, anxiety, and phobia be permanently aggravated by the compensable injury to become a part of the

compensable injury. Permanency is a requirement for impairment, but not for a condition to become a part of the compensable injury. We reverse the determination of the hearing officer that the conditions of depression, anxiety, and phobia have not been permanently aggravated by the compensable injury of (injury date 3), and have not become a part of the compensable injury. We remand for the hearing officer to make a finding or findings of fact and a conclusion of law on the compensability of the claimant's depression, anxiety, and phobia not inconsistent with this decision.

The sentence in the Statement of the Evidence states twice that the claimant injured her neck and back in 1994. It is clear that that was a mistake, and there is no indication that the claimant sustained two separate injuries to her neck and back in 1994. The mistake did not result in reversible error.

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 a 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.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge