

APPEAL NO. 980110

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 October 10, 1997. She (hearing officer) determined that the appellant's (claimant) compensable injury of _____, does not extend to or include depression or any other psychological problems. The claimant appeals this determination, contending that it is not supported by the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant sustained a prior compensable injury in a fall on (injury date 1), which resulted in herniation at L5-S1. She eventually returned to work in April 1995. On _____, she was directed to a meeting where she was notified that her position would be abolished on September 30, 1995. She said she had to walk approximately three-quarters of a mile back to her office after the meeting. About an hour later, she said, she was at her desk when she turned to the left, twisting the lumbar and cervical areas of her body, and felt extreme pain. She has not worked since. The claimant sought treatment from (Dr. V), on September 11, 1995, and did not mention her psychological problems, she said, because she was focusing on her physical pain. Dr. V referred the claimant to (Dr. A) for pain management and epidural injections. She then changed treating doctors. (Dr. HA), who first saw her on February 7, 1996. She said that on her first visit she told him about her emotional and psychological symptoms. His diagnoses included lumbar, thoracic, and cervical strain, radiculopathy and aggravation of the previous herniation. By December 1996, Dr. HA concluded that, because of her pain, the claimant was "acutely depressed and has suicidal thoughts." He referred her to (Dr. HD), who, in an evaluation of November 4, 1996, diagnosed "Dysthymic Disorder (Reactive Depression) - Related to back injury in 1994 with re-injury (injury date 2)." In a letter of April 30, 1997, Dr. HD noted symptoms of depression, insomnia, lack of self-esteem, being very forgetful, difficulties with concentration, having crying spells, loss of appetite, and loss of weight and reiterated his diagnosis of major depression. He concluded that there was a "direct relationship between her physical injury and her present medical disorder, major depression, recurrent with suicidal ideas." The basis for this conclusion was the "intensity of depression, continuation of clinical symptoms, absence of any psychiatric disorder prior to the accident, limitations imposed by the pain, and the fact that all of these changes in her life have taken place after the neck and lower back injury. . . ."

On January 14, 1997, the claimant underwent a required medical examination by (Dr. S) at the request of the carrier. He described the claimant as "very angry and hostile" with significant exaggerated pain behavior with wincing, whining and groaning with all

movements." He reviewed imaging studies from the 1994 injury and the 1995 injury and found "essentially no change." He concluded that the claimant made an excellent recovery from the first injury and then had a marked exacerbation of symptoms after the second injury. In his opinion, the claimant was "exceedingly angry with the insurance company and feels victimized." Because of what he believed were nonorganic findings and symptom amplification, he recommended that she be seen by (Dr. HI), Ph.D, a psychologist, for a pain interview and the administration of the Minnesota Multiphasic, Personality Inventory (MMPI) test.

The claimant saw Dr. HI on May 17, 1997. After an interview and administration of the test, Dr. HI found the profile invalid because of the large number of extremely rare responses. He felt that this was not caused by the claimant's failure to understand the test questions or by psychoses, but that it was "highly likely that her test approach was to endorse every pathological item in the scored direction to express the 'damage' that had been done to her . . . This suggests that she is not actually suffering the symptoms but rather that she is only expressing that she is suffering the symptom . . . for the purpose of obtaining some gain." Dr. S reviewed Dr. HI's opinion, discussed it with him and concluded that the psychological testing was consistent with his clinical impressions.

The Texas Workers Compensation Commission (Commission) then referred the claimant to (Dr. C) to determine whether "her psychological problems are related to the original injury of _____." In her report of September 18, 1997, Dr. C noted that the MRI reports reflected no significant physical changes after the second injury and that "all her electrodiagnostic studies have been normal." She further commented that the claimant's "account of her ailments had the flavor of something priorly rehearsed with sentences that were almost the exact replica of information present in her records." She also found "discrepancies between the reported symptoms and objective findings" in the records and her interview and concluded that the claimant presented "an intentionally magnified clinical picture and that [claimant's] symptoms are not related to the work injury of _____." (Emphasis in original.) The claimant testified that both Dr. C and Dr. HI appeared antagonistic to her and for this reason, she believed, their opinions and conclusions were biased.

The claimant had the burden of proving that her _____, injury was a producing cause of her depression and associated psychological problems. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). This was essentially a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 962389, decided January 2, 1997. In her discussion of the evidence, the hearing officer discussed at length the medical evidence and determined that the weight of this evidence did not support the claimant's position. In her appeal of this determination, the claimant essentially contends that the hearing officer improperly discounted "almost completely" the opinions of Dr. HI and HD, who had treated the claimant over a period of time in favor of the opinions of Dr. C, Dr. HI and Dr. S. The hearing officer, as fact finder, was the sole judge of the weight and credibility of this

evidence. Section 410.165(a). It was her responsibility to evaluate this evidence and to determine what facts had been established. We will reverse a factual determination of a hearing officer only if it is so against the great weight and preponderance of the evidence as to be clearly erroneous and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Under this standard of review, we decline to reweigh the evidence, but find that the evidence deemed credible by the hearing officer was sufficient to support her findings that the claimant's depression and psychological problems were not a result of her injury of _____.

In her appeal, the claimant also comments that the hearing officer concluded "without any medical evidence . . . that [claimant] does not suffer from depression" and other symptoms. We disagree with this interpretation of the decision and order. The hearing officer did not find that the claimant did not have these conditions, only that they were not caused by the physical injury of _____. This is clear in the Decision wherein she states: "Whatever psychological problem or depression the Claimant may have is not an extent of, nor included in, her injury of _____," and in Finding of Fact No. 5 in which she found no psychological injury". . . from her injury of _____," and in Finding of Fact No. 6 in which she found no psychological injury". . . as a direct and natural result of her injury." Similarly, the claimant argues that the hearing officer improperly based her conclusion on the failure of the psychological problems to "appear immediately after the _____, injury." In her discussion of the evidence, the hearing officer wrote that the claimant "did not mention any mental depression until July 1996." This is consistent with the claimant's testimony and was properly a consideration for the hearing officer. More importantly, a review of the findings of fact and conclusions of law of the hearing officer discloses that the hearing officer did not base her decision on the late appearance of the psychological or emotional symptoms.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Christopher L. Rhodes
Appeals Judge