

APPEAL NO. 980226  
FILED MARCH 20, 1998

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 December 19, 1997 with a hearing officer. He determined that the decedent's compensable injury of \_\_\_\_\_, was a producing cause of his depression; that his suicide was related to the compensable injury; and that the suicide was a compensable death under the 1989 Act. The appellant (carrier) appeals these determinations, contending that they constituted error as a matter of law and that they were otherwise not supported by sufficient evidence. The respondent beneficiaries (claimants) of the decedent reply that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The deceased sustained a compensable low back injury on \_\_\_\_\_, while working at his part-time job. In a report of September 18, 1996, (Dr. Z), apparently a carrier-selected doctor, diagnosed lumbar strain syndrome with radiculopathy and subjective complaints of pain "which are disproportionate to his physical findings." On September 30, 1996, (Dr. D), apparently the treating doctor, diagnosed low back pain, sciatica, chronic pain syndrome and depression. The anticipated recovery date and return to work date were "unknown at this point."

The deceased was hospitalized for depression in 1993. Because the claimant appeared to be "extremely depressed" at his first visit with Dr. D on September 30, 1996, Dr. D referred the claimant to (Dr. G), a psychiatrist, who had treated the claimant for his prior depression. Dr. G admitted the claimant to the hospital for depression from October 22 through 30, 1996. The diagnoses at this time were major depression, recurrent, with psychotic features; dependent and obsessive personality traits; and severe stressors, that is, the recent on-the-job injury. The deceased committed suicide on \_\_\_\_\_.

In a letter of December 10, 1997, Dr. D wrote that the claimant had a prior history of depression, "but the industrial injury with the severe back and leg pain that he suffered brought on an acute episode of depression and he committed suicide as a result of the depression which is a secondary result of the industrial injury." He believed that depression was the most common cause of suicide. Dr. G wrote on February 25, 1997, that the claimant not only suffered major depression, but

[H]e suffered from pessimism [sic] in regard to his ability to return to gainful employment. His limited educational background and his age made him feel he would not be able to support his family. While in the hospital he discussed

with me that his peers told him that he would be labeled as unemployable by potential employers, due to his back injury and pain.

On May 27, 1997, Dr. G added to these comments by noting that the deceased was concerned that he could not pass the physical requirements to return to his full-time job and "did not see himself as capable of rehabilitating himself." Dr. G felt that the deceased defined his self-worth in terms of his ability to work and provide for his family. He concluded, "[i]t is my opinion, it was this personality style, his back injury/back pain, and his despair surrounding his situation that led to his death."

The claimant's wife testified that the claimant always did heavy labor and always worried about taking care of his family. She said he was never able to work after the injury and never out of pain.

The following findings of fact and conclusions of law have been appealed by the carrier:

### **FINDINGS OF FACT**

7. Decedent had constant pain as a result of the compensable injury.
8. Decedent was unable to deal with his pain and fears relating to his work and suffered a severe depression.
9. Decedent's depression which resulted in his suicide was triggered by his work related injury.
12. Decedent's depression impaired his ability to resist the impulse to self destruction.
13. Decedent's suicide was not a "willful" act within the meaning of [Section] 406.032.

### **CONCLUSIONS OF LAW**

3. Decedent's compensable injury of \_\_\_\_\_, was a producing cause of Decedent's depression.
4. Decedent's suicide was related to the compensable injury of \_\_\_\_\_.
5. Decedent's suicide was a compensable death under the [1989 Act].

The claimants had the burden of proof on the disputed issues. There was no dispute that the deceased sustained a compensable low back injury on \_\_\_\_\_, and that he had depression. The initial issue in this case was whether the lumbar injury was a producing

cause of the depression. Section 401.011(26) defines injury as damage or harm to the physical structure of the body "and a disease . . . naturally resulting from the damage or harm." In Texas Workers' Compensation Commission Appeal No. 961449, decided September 9, 1996, we addressed the "proper standard" for determining whether a claimant's psychological condition is the result of a physical compensable injury. There, we cited Texas Workers' Compensation Commission Appeal No. 950749, decided June 21, 1995, for the proposition that although a psychological problem may not have arisen, "but for" the physical injury, that alone is not sufficient to establish the compensability of the psychological condition. Rather, we quoted Texas Employers Insurance Association 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. [Emphasis in the original.]

The carrier argues on appeal that the hearing officer failed to apply this principle of law in concluding that the back injury was a cause of the depression. Specifically, it points to the evidence which showed that the claimant's fear of not being able to return to work and his concern for providing for his family were the causes of his depression and that these were circumstances that arose out of his injury, but were not the result of his compensable injury. It also points to the claimant's prior history of depression as evidence that the compensable injury did not cause a relapse of his depression.

While the wording of Findings of Fact No. 8 and No. 9 may leave it open to question whether the hearing officer applied the correct standard of causation in this case, we are satisfied that his Conclusion of Law No. 3 removed any substantial doubt that he was confused about the standard of law applicable in this case. See Texas Workers' Compensation Commission Appeal No. 971725, decided October 17, 1997. In that conclusion he used the words "producing cause," which gives some meaning to the supporting findings of fact that the claimant was "unable to deal with his pain" and that the depression was "triggered" by the injury.

Whether the claimant's lumbar injury was a producing cause of his depression was a question of fact for the hearing officer to decide. Appeal No. 971725. In light of the deceased's prior history of depression, the resolution of this question involved some analysis of whether the 1996 depression was a new disease or at least a compensable aggravation of the preexisting disease. According to his discussion of the evidence, the hearing officer appears to have reasoned that the claimant recovered from his prior depression because of no treatment since 1993, and that his depression in 1996 was, in effect, a new disease. While one may entertain doubts that the claimant had recovered from his earlier depression, given the opinions of Dr. D and Dr. G, which the hearing officer found credible and persuasive, we conclude that the evidence was sufficient to support the finding that the depression in 1996 was compensable on at least an aggravation theory. See Texas Workers' Compensation Commission Appeal No. 970730, decided June 9,

1997. Under our standard of review, we decline to reverse this determination. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Section 406.032(1)(B) provides that a carrier is not liable for compensation if the injury "was caused by the employee's wilful attempt to injure himself. . . ." Texas Workers' Compensation Appeal No. 93135, decided April 8, 1993, addressed the issue of whether the claimant sustained a compensable head injury from a suicide attempt. There we cited Saunders v. Texas Employers Insurance Association, 526 S.W.2d 526 (Tex. 1975) for the following proposition:

If the effects of an injury were such that derangement of the claimant's mind resulted and effectively impaired the injured employee's ability to resist the impulse for self-destruction, then the suicide, even though a conscious act, could not be termed willful for purposes of excepting the carrier from liability.

In accordance with this principle, to defeat the exclusion from compensability for willful attempts to injure oneself, there must be proven not only a state of mind that amounts to "derangement," but such must also be causally related to the suicide. This is a factual determination for the hearing officer.

While Finding of Fact No. 12 does not use the word derangement, it does state the depression impaired the claimant's ability to resist the impulse to self-destruction. This, we believe, is tantamount to a finding of derangement, as contemplated by the Texas Supreme Court in the Saunders, *supra*. The question raised by the appeal is whether the evidence was sufficient to support this determination. The carrier argues that the evidence established that the claimant did not "suddenly" become deranged, but acted with deliberateness in taking his own life. In support of this proposition, it points to the wife's testimony that the claimant appeared calm on the day of his suicide and deliberately went about the act of self-destruction. Of course, no one was aware of his state of mind in the moments before he took his life. In any case, we cannot agree that the standard of compensability in a case of this nature includes a requirement that the derangement arise "suddenly." As noted above, Dr. D and Dr. G, as confirmed by the claimant's wife, described his mental condition and personality as obsessively concerned with working and supporting his family, which goals apparently seemed to the deceased no longer attainable. The resulting despair, in the words of Dr. G, "led to his death." This evidence was obviously deemed credible and persuasive by the hearing officer. In our role as an appellate review body, we decline to reweigh this evidence or substitute our opinion of its credibility and persuasiveness for that of the hearing officer. Cain, *supra*; Pool, *supra*. Rather, we find it sufficient to support the determination that the claimant's suicide was a compensable death under the 1989 Act.

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

Alan C. Ernst  
Appeals Judge

CONCUR:

Elaine M. Chaney  
Appeals Judge

Judy L. Stephens  
Appeals Judge