

APPEAL NO. 980279
FILED MARCH 26, 1998

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 (CCH) was held on January 7, and January 12, 1998, in (City), Texas, with (hearing officer) presiding as hearing officer. She determined that the compensable injury of the respondent (claimant) extended to "disequilibrium and gait dysfunction." On appeal, appellant self-insured ("carrier" herein) contends that the hearing officer did not have jurisdiction to address this issue and, in the alternative, that the injury did not extend to the claimant's disequilibrium and gait dysfunction. Claimant responds that he agrees with the hearing officer's decision.

DECISION

We affirm.

Carrier first contends that the hearing officer did not have jurisdiction to address the issue of whether claimant's _____, compensable injury extended to the disequilibrium and gait dysfunction suffered by claimant. Carrier asserts that disequilibrium and gait dysfunction are mere symptoms and that the claimant's compensable injury cannot extend to a symptom.¹ However, carrier chose to agree to add the issue regarding whether an injury may extend to claimant's disequilibrium and gait dysfunction and the parties chose to litigate the issue. Therefore, we will address it. Further, carrier did not establish through medical evidence that disequilibrium and gait dysfunction are symptoms only.² Because of the parties choice to litigate extent of injury, under the facts of this case, we perceive no error.

Carrier next contends that the hearing officer's extent-of-injury determination is against the great weight and preponderance of the evidence. Claimant did not testify and there were no witnesses at the CCH. Claimant's medical records indicate that on _____, while working as a patrolman, he was "head butted" in the left ear as he tried to arrest someone. However, a January 25, 1994, psychological evaluation also states that claimant is depressed about his loss of equilibrium "two years before, after being kicked in the head by a bull." Claimant underwent surgery in April 1995 on his left ear to close a left perilymph fistula. A January 27, 1994, memorandum from Dr. GO to "Sgt. M" (Mr. M) states that claimant should be removed from regular duty status and prevented from carrying a firearm until he can be evaluated by a neurologist. In a March 1994 report, KA said that claimant's problems may be related to a deficiency of

¹Carrier did assert that these were mere symptoms but still agreed to add the issue.

²We note that the 1989 Act defines "injury" as damage or harm to the physical structure of the body and a disease naturally resulting from the damage or harm. Section 401.011(26).

vitamins B-12 and B-1, that an MRI shows some degree of brain atrophy, and that his brain lesions may be due to vitamin deficiency. Claimant's June 1996 EEG report stated that the diagnosis was "normal EEG." In a December 31, 1996, report, Dr. KA stated that claimant was "assaulted by a prisoner" and that "as a consequence of the assault, [claimant] has dizziness, equilibrium problems, ataxia, poor memory, confusion episodes, and changes in mentation." Dr. KA also said that claimant has developed peripheral neuropathy which is "not related to the trauma." Regarding his impairment rating (IR), Dr. KA said it included impairment for disturbance of complex integrated cerebral functions and emotional, sleep, and arousal disorders. Dr. KA said he did not rate the hearing and equilibrium impairment for the injury. In a February 1997 letter, Dr. CA said claimant was "head-butted" in the ear, that he shows no evidence of traumatic brain injury, that he has a family history of Lou Gehrig's disease, and that he should see a neurologist. In a May 14, 1997, letter, Dr. BL stated that claimant's IR is 30% and that "this is manifested by his difficulty in and inability to function in a normal way, secondary to vestibular dysequilibrium, as a result of his injuries, sustained." In an August 4, 1997, letter, Dr. HA stated under "impression," "perilymph fistula status post repair 4-11-95 with disequilibrium affecting gait" Under "discussion," Dr. HA wrote that claimant's gait difficulties are likely due to combined effects of neuropathy, vestibular dysfunction, and prolonged deconditioning related to balance deficits." Dr. HA said his history and physical are "not compatible with significant brain injury" and recommended EMG testing for motor neuron disease. In an October 29, 1997, letter, Dr. HA said, "this patient was found to have a purulent fistula which required repair on 04-11-95, and has resultant dysequilibrium causing a gait dysfunction"

The benefit review conference (BRC) report indicates that the stated issue was whether claimant's compensable injury extended to "the claimant's motor neuron disease and/or polyneuropathy." The parties agreed at the CCH to state the issue as whether the compensable injury extends to the "disequilibrium and gait dysfunction." The parties stipulated that the compensable injury does not extend to the motor neuron disease or polyneuropathy and that it does extend to claimant's perilymph/purulent fistula. The hearing officer determined that: (1) the perilymph/purulent fistula has resulted in his disequilibrium and gait dysfunction; (2) claimant's _____, compensable injury is a producing cause of his disequilibrium and gait dysfunction; and (3) that the compensable injury extends to the disequilibrium and gait dysfunction.

An employee has the burden of proving, by a preponderance of the evidence, that he or she sustained a compensable injury and the extent of the injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The issue of the extent of an injury is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 92653, decided January 21, 1993; Texas Workers' Compensation Commission Appeal No. 92654, decided January 22, 1993.

There was evidence from Dr. KA that, because of the assault, claimant had dizziness, equilibrium problems, and ataxia. There was also evidence from Dr. BL that claimant's difficulty in walking is "secondary to his vestibular dysequilibrium, as a result of his injuries." Therefore the hearing officer's determination that claimant's

_____ compensable injury extends to claimant's disequilibrium and gait problems is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We would note that any question regarding whether claimant may receive treatment for any symptom or manifestation of his compensable injury is a question for the medical review division. Our decision does not affect claimant's right to lifetime medical benefits under the 1989 Act. Section 406.021(a); Texas Workers' Compensation Commission Appeal No. 92649, decided January 6, 1993. The determination of "benefit disputes" are adjudicated by the Commission's Hearings Division. Rule 140.1. A "benefit dispute" is one "regarding compensability or eligibility for, or the amount of, income or death benefits." *Id.* However, the determination of what "health care is reasonably required by the nature of the injury" is a matter for the Commission's Medical Review Division. Sections 406.021(a) and 413.031(a); Rule 133.305; *see also* Appeal No. 951258, *supra*; Appeal No. 94326, *supra*; and Appeal No. 970488, *supra*. In so noting, we would caution against the use of the CCHs and the hearings division in an attempt to obtain a ruling on what essentially are medical review division issues.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge