APPEAL NO. 980434

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 January 16, 1998, with a hearing officer. With regard to the issues at the CCH, he (hearing officer) determined that (decedent) _____, compensable injury did not result in his death. The decedent's widow, appellant (claimant), appeals, seeks a reversal of the decision and argues that the decedent's death was caused by the effects of a medication prescribed to him for treatment of his compensable injury, Meprobamate. The respondent (carrier) responds, seeks an affirmance of the decision and argues that the decedent expired as a result of the effects of an overdoes of Meprobamate combined with the effects of the use of an illegal drug, marijuana.

DECISION

We affirm.

The parties stipulated that the decedent sustained a compensable low-back injury on _____, and died on May 10, 1997. On May 2, 1997, the decedent's initial choice of treating doctor, (Dr. M), testified by deposition on written questions that he prescribed the decedent Meprobamate for muscle relaxation. He initially prescribed one 400-milligram (mg.) tablet three times per day, then informed him he could take two 400-mg. tablets two times per day. According to Dr. M and the pharmacy records, on May 2, 1997, the pharmacy filled a prescription for 90 tablets, as authorized by Dr. M. Dr. M testified that the decedent was informed that he should not mix Meprobamate with alcohol. Dr. M stated that he did not prescribe marijuana to the decedent. On May 9, 1997, his treating doctor, (Dr. C), advised he continue with his medication.

The claimant testified at the CCH that on May 9, 1997, she arrived at her and the decedent's home at approximately 9:00 p.m. She said the decedent told her he had smoked marijuana earlier in the evening to relieve pain associated with the compensable injury. She testified that when she went to bed at 12:30 a.m. on May 10, 1997, the decedent was already asleep. At 11:00 a.m. that morning, she discovered the decedent dead in their bed. The claimant testified and the May 10, 1997, police report of (city one) (Officer D), stated the decedent told her before he went to bed that he had drunk a six-pack of beer. Officer D noted that there were 45 tablets of Meprobamate remaining in the bottle. According to the police report, the claimant informed Officer D she took five of the tablets herself. She testified at the CCH that there were another 10 tablets in her purse but she had failed to inform Officer D of that.

On May 12, 1997, the county medical examiner, (Dr. H), opined that the decedent "died from complications of [M]eprobamate overdose" and left the manner of death to be determined by the Justice of the Peace. The May 29, 1997, toxicology report issued by. (Dr. BA) revealed a blood Meprobamate level of 30 mg./l. On June 5, 1997, the Justice of

the Peace, (Judge C), issued a certificate of death, listing the cause of death as "[M]eprobamate Toxicity (overdose)." Dr. M testified that Meprobamate, if used as prescribed, would not cause death "unless additive drugs were used." Dr. M opined that 30 mg of Meprobamate per liter (l) of blood would not cause death "without interaction with other conditions." A pathologist, (Dr. R), testified by deposition on written questions as follows:

> In my opinion, the combination of [M]eprobamate and psychotropic and CNS [central nervous system] depressant drugs can cause death. Marijuana is such a drug.
>
> I conclude that cannabis-like substances in sufficient quantity in conjunction with therapeutic doses of [M]eprobamate could cause sufficient suppression of normal functions, such as respiration, to bring on such static conditions of the body that could lead to death.

On December 9, 1997, the carrier's peer review toxicologist, (Dr. BO), noted that the usual blood level range for a therapeutic dose of Meprobamate is five to 25 mg./l and it may occasionally be as high as 30 mg/l. On December 23, 1997, Dr. BO wrote that "the concentration of [M]eprobamate reported by the toxicology laboratory is not sufficient to support a conclusion of death caused by [M]eprobamate."

The hearing officer found:

FINDINGS OF FACT

6. The level of [M]eprobamate in Decedent's blood at the time of his death was not sufficient to cause death without some other factor.

7. Claimant smoked marijuana in an attempt to relieve his pain on the evening of May 9, 1997.

8. Marijuana has additive effects when combined with [M]eprobamate.

9. Marijuana is an illegal drug and had not been prescribed or recommended to the Decedent by any physician.

10. Smoking marijuana was not reasonable and necessary medical treatment for Claimant's compensable injury.

11. Decedent's death was the result of the additive depressant effects of marijuana and [M]eprobamate upon the [CNS].

12. Decedent did not die as a result of reasonable and necessary medical treatment for the compensable injury of _____.

The question which was before the hearing officer, and before us on appeal, is whether the compensable injury to the decedent resulted in his death. "An insurance company shall pay death benefits to the legal beneficiary if the compensable injury to the employee results in death." Section 408.181(a). A compensable injury is "an injury that arises out of and in the course and scope of employment for which compensation is payable under [the 1989 Act]." Section 401.011(10). An injury is "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). An employee, or his beneficiary, has the burden of proving, by a preponderance of the evidence, that the employee sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. Likewise, the employee bears the burden to show the extent of a compensable injury. Texas Workers' Compensation Commission Appeal No. 92653, decided January 21, 1993; Texas Workers' Compensation Commission Appeal No. 92654, decided January 22, 1993. The issue of the extent of an injury is a fact question for the hearing officer. *Id.*

"[B]enefits, including death benefits, are payable for a condition brought about by reasonable or necessary medical treatment for a work-related injury." Texas Workers' Compensation Commission Appeal No. 960574, decided May 3, 1996, citing Texas Workers' Compensation Commission Appeal No. 93612, decided September 3, 1993. In Appeal No. 960574, *supra*, the decedent expired as the result of a "mixed drug overdose," and we affirmed the hearing officer's decision that his compensable injury resulted in his death. We distinguish that opinion from the case under review because the decedent was found to have died from a mixed drug overdose involving an illegal drug and the employee therein died as a result of a mixture of legal drugs prescribed by his physician for treatment of his compensable injury. In Appeal No. 93612, *supra*, we held that the 1989 Act "supports compensation for a condition brought about by reasonable or necessary medical treatment for a work related injury," citing Liberty Mutual Insurance Co. v. Pool, 449 S.W.2d 121, 123 (Tex. Civ. App.-Texarkana 1969, writ ref'd n.r.e.); and Home Insurance Co. v. Gillum, 680 S.W.2d 844 (Tex. App.- Corpus Christi 1984, writ ref'd n.r.e.). In that case, the employee had been prescribed a narcotic to relieve pain associated with his compensable injury. He alleged he was addicted to the narcotic and his addiction was brought on by his compensable injury, and he sought medical treatment for the addiction. We found that the evidence did not show the necessary causal connection between the injury and the addiction, as a matter of law, and reversed and rendered a decision that his compensable injury did not extend to his narcotic dependency.

The contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance

Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The findings of fact regarding the effect of Meprobamate and the "additive effect" of the marijuana on the decedent are supported by the testimony of Dr. M and Dr. R, the reports of Dr. H, Dr. BA and Dr. BO, the police report and the certificate of death. The hearing officer found that the claimant did not meet her burden of proof to show an uninterrupted causal connection between the compensable injury and the decedent's death. We conclude that the determination that the decedent's compensable injury did not result in his death is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and, therefore, we affirm.

Christopher L. Rhodes
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Elaine M. Chaney
Appeals Judge