

APPEAL NO. 990008

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 8, 1998. The appellant (claimant) and the respondent (carrier) stipulated that the claimant sustained a compensable low back injury on _____, and that he had spinal surgery on July 19, 1996. The hearing officer determined that the claimant's compensable injury is not a producing cause of his hypertension and sexual dysfunction. The claimant appealed, reviewed the testimony and the seven exhibits he had admitted at the hearing, urged that the evidence supports his position that his hypertension and sexual dysfunction are inescapably linked to the compensable injury, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that his compensable injury is a producing cause of his hypertension and sexual dysfunction. The carrier replied with a lengthy response, reviewed the evidence, cited some court cases and numerous Appeals Panel decisions, urged that the evidence is sufficient to support the decision of the hearing officer, argued that the Appeals Panel decision cited by the claimant did not require reversal of the decision of the hearing officer, and requested that the decision of the hearing officer be affirmed.

DECISION

We affirm.

The carrier had admitted into evidence over 200 pages of medical records and considerable time was taken to read those records. Parts of the records support the position of the claimant. We have previously criticized the practice of having voluminous medical records introduced without indicating the purpose for introducing those records or pointing out parts of the records that are to be considered in resolving the disputed issues.

The Decision and Order of the hearing officer contains a statement of the evidence. Briefly, the claimant testified that he did not have hypertension or sexual dysfunction prior to his surgery on July 19, 1996, and that he had those problems soon after surgery. Dr. M, the claimant's treating doctor, testified that the claimant had lumbar surgery and has failed back syndrome; that he did not have hypertension or sexual dysfunction prior to the surgery; that he had the problems after surgery; that tests, including general blood chemistry tests, were conducted and did not show a cause for the claimant's hypertension; that the claimant had an increase in pain that can cause hypertension; that it is difficult to prove with any specificity what causes hypertension; and that the strongest contender for the cause of the claimant's hypertension is the intractable pain. Dr. M said that the claimant has nerve root damage and that nerve root damage is a potential cause for sexual dysfunction; that the claimant's history of passing kidney stones did not appear to cause the sexual dysfunction; and that a urological consultation was requested but not approved by the carrier. The record does not reveal whether the medical dispute resolution system was used in an effort to obtain approval of the requested consultation. Dr. R, who has a Ph.D. in psychology, testified that he saw the claimant for pain management and had

treated his depression and anxiety associated with chronic pain; said that depression, pain, anxiety, and panic attack can certainly elevate blood pressure; that he had reviewed reports of medical doctors; that he assumed that the claimant's hypertension is probably related to the conditions he experienced following surgery; and that causation is more a medical question than a psychological question. Several doctors recommended neurological and urological evaluations to determine the cause of the sexual dysfunction, but apparently those tests were not approved by the carrier. Several doctors said that they did not know what was causing the claimant's hypertension and one reported that he thought that the claimant's symptoms were unrelated to the initial injury and the surgery.

The burden is on the claimant to prove by a preponderance of the evidence the extent of an injury. Texas Workers' Compensation Commission Appeal No. 94851 decided August 15, 1994. 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). When the matter of causation is outside common experience, expert testimony is required to establish that the disease is causally connected to the compensable injury. Texas Workers' Compensation Commission Appeal No. 93939, decided November 24, 1993. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The claimant had the burden to prove causation based on a reasonable medical probability, but the use of particular words by medical experts is not necessary to create a probability. Parker v. Employers Mutual Liability Insurance Company of Wisconsin, 440 S.W.2d 43 (Tex. 1969). 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 claimant cited an Appeals Panel decision in which the Appeals Panel affirmed a decision that a claimant's sexual dysfunction is related to the compensable back injury. As the carrier pointed out in its response, that a different factual determination could have been made based upon the same evidence is not a sufficient basis to overturn a factual determination of the hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Only were we to conclude, which we do not in this case, that the hearing officer's determinations that the claimant's compensable injury is not a producing cause of his hypertension and sexual dysfunction are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb those determinations. 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 the determinations

of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge