

APPEAL NO. 990088

Following a contested case hearing held on December 4, 1998, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by finding that neither the appellant's (claimant) depression nor her left knee and left elbow conditions flow naturally from the compensable injury she sustained on _____, and by concluding that claimant's depression, left knee and left elbow conditions are not a result of the compensable injuries she sustained on that date. Claimant has appealed these findings and the conclusion for insufficiency of the evidence and she also asserts error in the hearing officer's excluding from admission into evidence her (hospital) records. The respondent (carrier) asserts in response that the evidence is sufficient to support the appealed findings and that the hearing officer properly excluded the hospital records because they were not timely exchanged.

DECISION

Affirmed.

The parties stipulated that claimant sustained a compensable injury to her cervical and lumbar spine on _____.

Claimant testified that on _____, while working for (employer), she was involved in a motor vehicle accident (MVA) and injured her neck and back. Concerning the cause of her claimed depression, claimant testified that the chronic pain she experienced following the MVA, treated with therapy, medications, and injections, caused her to develop a major depression which she began to discuss with her treating doctor, Dr. W, in December 1997, and for which she has had treatment, including hospitalization in May 1998, from psychologist Dr. L and psychiatrist Dr. M. She further stated that since the MVA, she has not worked, that pain has limited her driving, performance of household tasks, and social activities, that she has had sleep disturbance and side effects from medications (none specified), that she has gained more than 60 pounds, that in March 1998 she began to have marital problems because of the loss of her income and inability to engage in sex with her husband, and that her husband has since moved out.

Concerning the claimed left elbow and left knee injury, claimant testified that on or about July 15, 1997, she was transported from Dr. W's office for an MRI in a van belonging to the MRI facility and that she fell exiting the van, injuring her left elbow and left knee. She said that Dr. W prescribed physical therapy for these injuries and that her elbow is now better but that her knee is worse. Dr. W reported on July 14, 1997, that claimant was groggy from Xanax and fell out of the transport van from the MRI center, landing on the back of her head and also injuring her knee and elbow. Dr. W reported on September 19, 1997, that he explained to claimant that her fall from the van "indirectly" ties her left knee injury to her workers' compensation claim and that he will amend her records to reflect this.

Dr. L wrote on June 14, 1998, that it was his assessment that "[claimant's] emotional status is directly related to the injury she sustained in June of 1997" and that "her major depression has been caused by the lack of improvement she has experienced after extensive medical treatment." Dr. L also noted that claimant has been separated from her husband for the past few months "as a result of the stress of being unemployed and less available emotionally because of her physical pain." He also said he is requesting 12 additional psychotherapy sessions to treat claimant's major depression and that she is facing the end of a lengthy marriage and will require support to manage her pain and anxiety about surgery if recommended.

Dr. P, who said he is a clinical neuropsychologist and treats patients for depression from chronic back pain, testified that he had not examined claimant but had reviewed her medical records; that the records indicated controversy over the extent of her back injury with both Dr. Mc and Dr. B indicating there were no objective findings to support the symptoms she reported and that her reported pain was out of proportion to the objective findings; that claimant does have a cervical and lumbar radiculopathy, as reported by Dr. T, who did electrodiagnostic testing; and that the "relatively minor" cervical and lumbar injuries sustained by claimant in the MVA do not cause major depression with psychotic features. Dr. T's January 29, 1998, report stated that claimant's recent EMG and nerve conduction studies showed a mild to moderate L5 radiculopathy and a C6 radiculopathy with no evidence of peripheral entrapment. Dr. P further testified that the bulk of Dr. L's psychological treatment has been directed to the marital and psychosocial stressors and lack of an adequate support system; that in addition to depression claimant had a psychotic disorder, a mental illness not typically aggravated by an MVA; that claimant's psychotic symptoms improved when she decided upon divorce; and that the mental hospital records he reviewed reflected that treatment there focused on the marital problems. Dr. P concluded that the cause of claimant's depression was the marital stressors and that there was no basis to conclude that pain caused the depression in that there is a lack of objective findings to account for claimant's reported pain. Dr. P further testified that he found it "significant" that claimant told Dr. Mc she had no prior accidents when, in fact, she had accidents in 1984 and 1990, and that she misled Dr. B in telling him she had lost consciousness when she never did. Dr. P's written report dated September 8, 1998, stated his opinion that claimant's behavioral presentation and psychological symptomatology are not related to the _____, accident and that it appeared that her symptom reporting was being reinforced by her treatment.

Dr. Mc, a carrier-selected doctor, certified on March 6, 1998, that claimant reached maximum medical improvement as of that date with a zero percent impairment rating. In his accompanying narrative report, Dr. M stated that claimant's "current physical presentation is grossly functional," that "there is no objective evidence of a significant musculoskeletal or neurological injury," and that he sees no objective basis for her long-term and persistent multi-focal complaints, poor response to extensive treatment, and perceived inability to return to any type of work. He also noted that claimant is significantly overweight for her height.

Dr. B wrote on July 29, 1998, that claimant's lumbar myelogram and CT scan were normal and that he "cannot really explain her symptoms for her exam to day on the basis of her myelo-CT or any other testing that we have done."

Injury is defined in the 1989 Act to mean 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). This case centers around the question as to whether claimant's depression and her left elbow and left knee injuries "naturally resulted" from the original damage or harm to the physical structure of her body. In Maryland Casualty Company v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e. *per curiam* 432 S.W.2d 515), the court stated that "[t]he law is well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that specific injury if such injury or proper or necessary treatment therefor causes other injuries which render the employee incapable of work." However, the Appeals Panel has noted that it "has not endorsed a blanket concept that brings within the ambit of compensable injury every consequence that arguably may not have occurred 'but for' the compensable injury." Texas Workers' Compensation Commission Appeal No. 941575, decided January 5, 1995. In Texas Workers' Compensation Commission Appeal No. 961449, decided September 9, 1996, we stated that "if a claimant's psychological condition is causally related to the compensable injury, it, too, is compensable," and "[t]he fact that there may be more than one cause of the claimant's psychological condition and that there are other stressors in this case beyond the claimant's chronic pain and multiple failed surgeries does not preclude a finding of compensability, provided that there is a causal connection between the compensable injury and the claimant's psychological problems."

Whether claimant's _____, injury was a producing cause of her depression and her left elbow and knee injuries were presented the hearing officer with questions of fact to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer could credit the opinion of Dr. P that claimant's MVA injuries did not result in her depression as well as the evidence that neither Dr. Mc nor Dr. B found an objective basis in the testing for claimant's reported symptoms. As for her left elbow and left knee injuries on or about July 15, 1997, the hearing officer could consider the lack of evidence from either claimant or Dr. W concerning the cause of her fall exiting the van. Dr. W's reference to claimant's being groggy from a medication was merely stating what he had apparently been told by claimant. Not only did claimant not testify to this effect but the history of an incident provided by a claimant to a doctor is not proof of the truth of the claimant's statements to the doctor. Texas Workers' Compensation Commission Appeal No. 92067, decided April 3, 1992.

With respect to the hearing officer's ruling excluding from evidence claimant's hospital records, Section 410.160(2) provides that within the time prescribed by rule of the Texas Workers' Compensation Commission the parties shall exchange all medical records. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c)(1)(B) (Rule 142.13(c)(1)(B)) provides that except as provided in subsection (g), no later than 15 days after the benefit review conference (BRC), parties shall exchange with one another all medical records. Claimant's attorney advised the hearing officer that he was retained by claimant after the deadline for exchanging documents had passed and that he mailed claimant's exhibits, including the hospital records, to the carrier on November 2, 1998. The carrier's attorney represented that the documents were not received until November 6, 1998. The hearing officer asked claimant what documents she had exchanged at the BRC and she said she gave the carrier her hospital records. The carrier's representative then asserted that the carrier could not acquire the hospital records until claimant signed an authorization for their release and that she was asked to sign a release at the BRC but declined to do so stating she would retain an attorney. The hearing officer then administered the oath to claimant and asked her what documents she exchanged with the carrier at the BRC and she responded that she did not exchange any documents at the BRC because she did not have them there. The hearing officer eventually admitted all of claimant's exhibits, except the hospital records, after determining that they had been "discussed" at the BRC. The BRC report in evidence reflected that the BRC was held on October 9, 1998. Claimant conceded that the hospital records were mailed November 2, 1998, and did not challenge the assertion that they were not received by the carrier until November 6, 1998.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge