

APPEAL NO. 990272

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 January 13, 1999. With respect to the issues before him, the hearing officer determined that the medical treatment for the compensable injury is a producing cause of the respondent's (claimant) photophobia; that the appellant (carrier) timely contested the compensability of the photophobia and did not waive its right to do so; and that the claimant is not entitled to supplemental income benefits (SIBS) for the 17th and 18th quarters. The parties resolved an issue as to the claimant's average weekly wage by stipulating that it is \$219.21. The carrier filed an appeal challenging the hearing officer's determination that medical treatment for the compensable injury was a producing cause of the photophobia. The appeals file does not contain a response to the carrier's appeal from the claimant. In addition, the claimant did not appeal the determinations that she is not entitled to SIBS for the 17th and 18th quarters and that the carrier timely contested the compensability of the photophobia.

DECISION

Affirmed.

Because only the issue of whether the compensable injury, or medical treatment for the injury, was a producing cause of the photophobia is before us on appeal, our factual recitation will be limited to those facts most germane to that issue. The parties stipulated that the claimant sustained a compensable low back injury on _____. The claimant testified that she was injured in the course and scope of her employment with the school district when, in an attempt to restrain an emotionally disturbed child, she put her arms around him and they both fell to the ground. The claimant has had two low back surgeries as a result of her compensable injury. She testified that after her second surgery, she developed a dural tear which permitted spinal fluid to leak. She stated that she contracted meningitis shortly thereafter and then she developed photophobia. The claimant explained that with photophobia, her pupils no longer adjust to light and that, as a result, her eyes hurt when she is exposed to direct light and she suffers from severe headaches. The claimant testified that Dr. C, the neurologist to whom she was referred by the surgeon who performed her second spinal surgery, told her that the leaking spinal fluid caused meningitis, which in turn caused her to develop photophobia.

In a letter of January 31, 1995, Dr. P, an ophthalmologist who examined the claimant, stated that "severe photophobia and constant cephalgia following the types of difficulties that she has experienced is described in the literature but is quite unusual especially to her degree of discomfort." In a letter of February 1, 1995, Dr. P stated:

[Claimant] developed a dural leak with the second surgery which was recognized and treated with three weeks of in hospital bed rest post operatively. However, since that time she has experienced a chronic daily varying posterior occipital headache with at least three exacerbations

requiring hospitalization and treatment for pain. She has also become severely photophobic and has very limited activities and cannot drive at night.

She has considerable difficulty functioning because of needing to keep the curtains drawn, shades pulled and generally gets about in the dark as much as possible.

The local neurologist, [Dr. C] has hospitalized her and treated her with IV DHE. With that he was able to control the headaches for a time but was unable to affect the photophobia.

When I saw her on January 31, her vision was correctable to 20/25-20/30 OU. Minimal changes were required in her four year old glasses and we did not change the glasses pending recovery from the photophobia. The rest of her ocular exam was essentially normal with normal intraocular pressures, normal stereo development, a relatively normal slit lamp exam and a normal fundus exam. I could not explain any of her complaints based on any ophthalmic etiology.

The carrier argues that the hearing officer's determination that the medical treatment for the compensable injury was a producing cause of the photophobia is against the great weight and preponderance of the evidence. That issue presented a question of fact for the hearing officer to resolve. The carrier contends that the evidence presented by the claimant was insufficient to sustain the burden of proving the causal connection. In his January 31, 1995, letter Dr. P states that, although the severity of the claimant's condition is "quite unusual," the medical literature provides for the development of photophobia following a dural leak. In his February 1, 1995, letter, Dr. P again notes the history of the claimant's having developed severe photophobia after she developed a dural leak following surgery and stated that his examination had ruled out an ophthalmic etiology for the photophobia. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer is charged with the responsibility for resolving the conflicts and inconsistencies in the evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To that end, the hearing officer could believe all, part, or none of the testimony of any witness and could properly decide what weight he would assign to the testimony and evidence before him. *Id.* We will not substitute our judgment for that of the hearing officer where his determinations are supported by sufficient evidence and are not so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In this instance, it is apparent, that the hearing officer considered the prompt onset of the photophobia after the claimant developed the dural leak, the evidence from Dr. P that the medical literature provides for the development of photophobia after such an event, and Dr. P's failure to find an ophthalmic etiology for the development of the photophobia, and determined that the evidence was sufficient to sustain the burden of proving that the treatment for the claimant's compensable injury, namely her spinal surgery and the resulting complications therefrom, was a producing cause of the photophobia. Our review of the record does not demonstrate that that determination is so

against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse it on appeal.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge