

APPEAL NO. 990320

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 November 6, 1998. The initial hearing was continued and the record closed on January 8, 1999. With respect to the issues before her, the hearing officer determined that the respondent's (claimant) compensable injury is a producing cause of his impotence but not of his claimed depression and that the claimant is not entitled to supplemental income benefits (SIBS) for the fifth and sixth quarters. In its appeal, the carrier argues that the hearing officer's determination that the claimant's compensable injury was a producing cause of the claimant's impotence is against the great weight of the evidence. The appeals file does not contain a response to the carrier's appeal from the claimant. The claimant also did not appeal the determinations that the compensable injury is not a producing cause of the claimed depression and that he is not entitled to SIBS for the fifth and sixth quarters.

DECISION

Affirmed.

Because only the issue of the causal connection between the claimant's impotence and his compensable injury is before us on appeal, our factual recitation will be limited only to the facts most germane to that issue. The parties stipulated that the claimant sustained a compensable low back injury on _____. An MRI of January 26, 1995, revealed a central posterior disc herniation at L5-S1. On October 2, 1995, Dr. P, the claimant's treating doctor, performed a laminectomy and fusion at L5-S1. In a letter of September 2, 1998, Dr. P stated that the claimant has chronic complaints of low back pain. In addition, Dr. P noted that "[h]e has presented with complains [sic] of impotence also, secondary to the lumbar laminectomy and spinal fusion and was provided with Viagra, to see if this would help his situation. Unfortunately, this medication has not been paid for and the patient has not been able to obtain this medication, again due to financial difficulties." In a letter sent in response to a letter from the hearing officer, Dr. P stated:

In review of the patient's chart, it is noted that the patient complained of impotence, which is secondary to lumbar laminectomy and spinal fusion. He presented with complaints of back pain, with spastic muscles.

This is a 49-year old, Hispanic individual, with a lot of emphasis on being able to perform sexually. As most male adults of this age do.

In a report of October 16, 1998, Dr. C, who conducted a records review on behalf of the carrier, stated:

It was noted on 06/09/98 by [Dr. P] that the patient was complaining of impotence. However, at this time, it is certainly not clear that his impotence is secondary to the compensable injury. First of all, this individual is 49 years

old. Medical studies indicate that probably at least 50% of all males over the age of 40 have problems with impotency from time-to-time. In order to delineate whether the impotence is directly related to the compensable injury, a urological workup would have to be accomplished. However, in all medical probability his impotence is most likely secondary to the natural aging process.

The carrier argues that the hearing officer's determination that the claimant's compensable injury was a producing cause of his impotence is against the great weight and preponderance of the evidence. That issue presented a question of fact for the hearing officer to resolve. In this instance, there was conflicting medical evidence on the question of whether the claimant's compensable injury, and more specifically, the surgery he received for his injury, caused his impotence. Dr. P opined that the impotence was "secondary to the lumbar laminectomy and fusion," while Dr. C opined that "in all medical probability his impotence is most likely secondary to the natural aging process." The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence under Section 410.165(a). As the fact finder, the hearing officer is charge with the responsibility for resolving the conflicts and inconsistencies in the evidence and for deciding what facts have been established. Texas Employers Ins. Ass'n v Campos, 666 S.W.2d 286 (Tex. App.-Houston, 1984, no writ). The hearing officer was acting within her province as the sole judge of the evidence in giving more weight to the evidence demonstrating that the compensable injury was a producing cause of the claimant's impotence, rather than to the evidence that it was not. Our review of the record does not demonstrate that the hearing officer's extent-of-injury determination is so against 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). Accordingly, no sound basis exists for us to reverse that determination on appeal.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge