APPEAL NO. 990326

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 20, 1999. The issues at the CCH were extent of injury and impairment rating (IR). The hearing officer concluded that the respondent's (claimant) compensable injury is a producing cause of his psychological and psychiatric conditions, including his cognitive and neuropsychological dysfunctions. The hearing officer also concluded that the claimant's IR is 15% based upon the report of a designated doctor selected by the Texas Workers' Compensation Commission (Commission). The appellant (carrier) files a request for review arguing that the hearing officer erred in admitting one of the claimant's exhibits, that the hearing officer erred in finding that the claimant's compensable injury was a producing cause of his psychiatric conditions, including his cognitive and neuropsychological dysfunctions, and that the hearing officer erred in concluding that the claimant's IR is 15%. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarizes the evidence in her decision and we adopt her rendition of the evidence. We will briefly touch on the evidence germane to the appeal. This includes stipulations by the parties that on _____, the claimant sustained a compensable injury, that Dr. S was the Commission-appointed designated doctor and that the claimant attained maximum medical improvement (MMI) on May 4, 1998. There was evidence the claimant was injured working on an oil rig when a plug which he was handling, and which was under pressure, blew, throwing him against the rig. There was also evidence the claimant hit his head on the rig causing a deficit in his cognitive abilities, blurred vision and loss of memory. The claimant has seen a number of doctors as a result of his compensable injury. Dr. B, a neuropsychologist, evaluated the claimant in August 1996 and opined that the claimant had suffered personality changes due to a traumatic brain injury. Dr. B noted that while some preinjury factors were relevant to the claimant's problems the neurological changes from the injury were a dominant factor in the claimant's mental and emotional status.

Dr. Bu, the claimant's treating doctor, certified in a Report of Medical Evaluation (TWCC-69) that the claimant attained MMI on May 4, 1998, with a 12% IR. This IR consisted to two components–a 10% whole body impairment related to traumatic brain injury and a two percent whole body impairment for injury to the thoracic spine. Dr. S, the designated doctor, certified on the TWCC-69 dated June 19, 1998, that the claimant had a 15% IR. This IR also consisted of two components–a 10% whole body impairment for cognitive dysfunction and a five percent whole body impairment for the low back. Dr. T reviewed the report of Dr. Bu and Dr. S at the carrier's request and opined that the claimant should not be awarded any impairment for his spine, stating that the "only agreed

mentioned body part that is acceptable, reproducible, and consistent is the closed head injury." Dr. P, a psychologist who also reviewed the claimant's medical records for the carrier, opined both in a written report and in live testimony that the claimant's psychological conditions were not causally related to the compensable injury.

The carrier contends that the hearing officer erred in admitting Claimant's Exhibit No. 19. This exhibit consisted of the written statements of a number of individuals who stated they had known the claimant for some time and that prior to his injury he had not had mental or physical problems but that they had observed that he had both physical and mental limitations after the injury. The carrier objected to the admission of this exhibit as not being timely exchanged and that the claimant failed to answer an interrogatory concerning these statements propounded by the carrier. The claimant argued that the statements were provided to the claimant as soon as they could be gathered. The claimant, through the ombudsman, argued that his wife, who worked full time, had to gather the statements because he was unable to do so himself.[1] The hearing officer found good cause for the failure to timely exchange as well as for the failure to answer the interrogatory pointing to the special circumstances of the case.

We note that the standard of review for the admission of evidence is one of abuse of discretion. Under the facts of this case, we find no abuse of discretion in the hearing officer's finding of good cause concerning late exchange and failure to respond to the interrogatory. While the parties may have disputed the cause of the claimant's mental condition, there was no dispute that the claimant suffers from severe mental limitations and finding good cause for his failure to meet these procedural requirements does not constitute reversible error under the circumstances of this case. We also note that the statements in the exhibits in question were statements of lay people concerning the claimant's condition. There is voluminous medical evidence in the record and the hearing officer appears to have relied on the medical evidence in making her decision in regard to the issues before her. Also, while the carrier appears to argue on appeal that the claimant had the burden of proving that his psychological and psychiatric problems did not predate his injury, the burden of proving that the claimant's preexisting condition is the sole cause of the claimant's condition was in fact the carrier's. *See* Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977). Under these circumstances, we find any error in the admission of the exhibit was harmless. *See* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the 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. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance

[1]The claimant did not testify at the CCH due to his mental state and there was some discussion concerning his ability to understand the proceedings.

Company of Newark, New Jersey, 508 S.W.2d 701, 702 (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, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and 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). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

There is evidence in the reports of Drs. B, Bu and T supporting the hearing officer's finding that the claimant's injuries extended to his psychological and psychiatric conditions. The carrier contends that these opinions are insufficient because these doctors did not have the benefit of reviewing statements concerning the claimant's accident from coworkers and that they failed to properly explain the basis of their opinions. The carrier does not question these doctors' credentials as experts. Expert witnesses are allowed to give opinions and the carrier's arguments really go to what weight should be given the opinions of these doctors. Under our standard of review this is primarily a question for the hearing officer and we decline to reweigh the evidence. We do not find that the opinions of these doctors were insufficient as a matter of law to support the findings of the hearing officer, and thus, we affirm the hearing officer's finding concerning the extent of the claimant's injury.

The carrier's only ground for attacking the IR was that it included impairment for the claimant's psychological and psychiatric conditions which the carrier argues was not part of the claimant's compensable injury. By affirming the hearing officer's extent-of-injury determination, we necessarily reject this argument.

The decision and order of the hearing officer are affirmed.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Tommy W. Lueders
Appeals Judge

_____
Elaine M. Chaney
Appeals Judge