

APPEAL NO. 990382

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 December 12, 1998. The record closed on February 1, 1999. She determined that the respondent (claimant) sustained a compensable injury on _____, and had disability from that date through the date of the hearing. The appellant (carrier) appeals these determinations, contending that they are contrary to the great weight and preponderance of the evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Reversed and a new decision rendered.

The claimant, who is 27 years old, worked as a truck driver. He suffers from a congenital condition of polycystic renal disease. On _____, he drove from City 1 to City 2 and experienced a low back pain. He returned to City 1, went home, and then the next day went to the hospital. His symptoms included low back pain and blood in his urine. The diagnosis of polycystic renal disease was made at this time. The claimant did not realize until then that he suffered from this disease. He contended that the "rough ride" provided by his truck caused a compensable aggravation of his preexisting ordinary disease of life.

We have held that the aggravation of a preexisting ordinary disease of life in the course and scope of employment can be a compensable injury in its own right. Texas Workers' Compensation Commission Appeal No. 91094, decided January 17, 1992. The claimant had the burden of proving that the aggravation was work related. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Because the cause of the hemorrhaging of a renal cyst is not within ordinary experience, the claimant had to prove causation by expert evidence to a reasonable degree of medical probability. Houston General Insurance Company v. Peques, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.).

The medical evidence in this case consisted of the opinions of Dr. S, the treating doctor, and Dr. F, a carrier-selected independent medical evaluation doctor. In response to written questions, Dr. S stated that the claimant's condition was hematuria secondary to polycystic kidney diseases and that "hemorrhagic hematuria" was the injury. He said that one of the cysts produced the severe bleeding. In response to the question of "what happened" on _____, to cause these "problems," Dr. S wrote "I don't know." He further said that what happened on _____, could have happened at any time, that the hemorrhage would "not necessarily" have occurred in any case; and that "possibly" the claimant's congenital condition would have lead to his current problems. When asked if it was "his speculation or best guess" that the truck driving "caused his current problems," Dr. S responded simply "yes." When asked if he could state "under sworn testimony that within reasonably medical probability, as opposed to possibility, driving a truck aggravated his problems" he said simply "no." He further said that "physical trauma may re-start bleeding and aggravate situation." Dr. F examined the claimant on July 10, 1998, and in a

report wrote that the claimant suffers from a progressive disease and that it is "very difficult to ascertain" whether the truck driving aggravated the condition.

Whether the claimant's truck driving on _____, aggravated the claimant's preexisting ordinary disease of life was a question of fact for the hearing officer to decide. Her decision is subject to reversal on appeal only if it is so against the great weight and preponderance of the evidence as to be clearly erroneous and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company 715 S.W.2d 629, 635 (Tex. 1986). The hearing officer commented in her decision and order that she found the claimant credible. Because, as noted above, causation in this case had to be established by expert testimony, the claimant's own opinion was not probative on this issue. The hearing officer made a finding of fact that Dr. S's opinion was that the claimant's condition was aggravated by work activities on _____. We observe that a finding of a doctor's opinion of causation is not the equivalent of an express finding of causation. In Dr. S's answers to the written questions propounded to him, he stated he did not know what happened on _____, to cause the aggravation, but the claimant's truck driving could have. He later described this as his "speculation or best guess" but expressly denied that he could say this under oath within reasonable medical probability. In our opinion, this evidence of Dr. S does not as a matter of law rise to the required level of reasonable medical probability and no probative evidence of causation was produced. For this reason, we find the determination of the hearing officer that the claimant sustained a compensable aggravation injury contrary to the great weight and preponderance of the evidence. That determination is reversed and a new decision rendered that the claimant did not establish a compensable aggravation of his preexisting polycystic renal disease.

We also reverse the hearing officer's determination that the claimant had disability, as the 1989 Act requires a finding of the existence of a compensable injury as prerequisite to a finding of disability, Section 401.011(16), and render a decision that the claimant did not have disability.

Alan C. Ernst
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge