APPEAL NO. 990499

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On February 9, 1999, a hearing was held. He (hearing officer) determined that respondent's (claimant) compensable neck injury on _____, was a producing cause of her cervical spine pain, headaches, right shoulder pain, and seizures, and that claimant had disability from June 17, 1998, through August 14, 1998, and from September 5, 1998, through the date of hearing. Appellant (carrier) asserts that medical evidence did not show that claimant's compensable injury caused seizures, that no injury caused claimant to be kept off work, that she was returned to work on September 30, 1998, and that the hearing officer erred in admitting three of claimant's exhibits over objection as to timely exchange. The appeals file does not contain a response from claimant.

DECISION

We affirm.

Claimant worked for (employer) on _____, when she sustained a neck and shoulder injury while moving a patient. She was treated by emergency room (ER) and released to light duty work; the document does not appear to be dated, but it is identified as having a date of June 17, 1998. In that initial ER report, claimant was referred to Dr. P. She saw Dr. P on July 1, 1998; he noted mild right shoulder pain, cervical pain, and headaches; he provided a history of claimant having hurt her neck while moving a patient on _____. His impression was cervicogenic headaches and cervical pain; he prescribed medication and other therapy, and he said claimant should not work. Thereafter, an MRI was negative for herniated discs and Dr. P provided facet injections. Although Dr. P's records prior to September 9, 1998, do not mention a referral to Dr. C, on September 9, 1998, Dr. P indicated that claimant had seen Dr. C recently.

Dr. P's September 9, 1998, note reflected that claimant had "become unconscious while driving" _____, and had an accident. He stated his concern that she had a seizure and that medications, including "Trazodone or Imitrex," which he said Dr. C had recently prescribed, may have been causative. At this time, Dr. P said that claimant could return to work on September 30, 1998. On December 16, 1998, Dr. P provided several comments including that claimant had been referred to Dr. C because of "persistent headaches"; Dr. C then treated her with trazodone, and thereafter claimant had a car accident, which claimant states involved a loss of consciousness. Dr. P then states, "There is a possibility that the medication decreased her normal seizure threshold, allowing a seizure to be demonstrated." He then added that, according to Dr. C, claimant cannot drive a vehicle until she has been seizure free for six months. He noted no restrictions except for that related to no driving.

Dr. C's notes reflected that claimant had migraine headaches at least as early as August 5, 1998. While Dr. C also noted that "[s]ince her 1st migraine Oct 97, had no

headache," claimant testified that in October 1997 she had returned from a trip with a bad headache and called Dr. C; over the phone he thought she had a migraine; she did not say what treatment he prescribed, but said that the next day she saw her allergy doctor, who treated her with antibiotics for what was diagnosed as a sinus infection. Claimant maintained that the October 1997 headache, regardless of Dr. C's note, was not a migraine. On September 2, 1998, Dr. C prescribed Imitrex and Desyrel (Trazodone) beginning claimant on 50 m/g with increases after five days to 100 m/g and after 10 days to 150 m/g. She had taken three doses of 50 m/g, one on September 2nd, one on September 3rd, and one on September 4th, by the time she had the accident on _____.

Dr. C's note of September 9, 1998, states that claimant, while driving on_____ felt a migraine beginning. A passenger described "tonic stiffness" in claimant. In addition, Dr. C said that paramedics reported "syncope with convulsions" on the way to the hospital. Dr. C also noted that claimant's father was epileptic, about which claimant explained that her father had been told he had seizures as a child. Dr. C wanted to have an MRI and EEG done but also noted that he would "ground her from driving 6 months." Claimant testified that she is to see Dr. C in March 1999 to determine if she has been seizure free and can return to driving.

Dr. C on November 9, 1998, said that claimant's migraine headaches were "triggered by the neck injury." He placed her on Desyrel for the headaches after which she had "one, or perhaps two, episodes . . . lost consciousness, stiffened, and recovered quickly." He added that she has had no "events" since stopping Desyrel. The hearing officer quoted Dr. C's next paragraph, so it will not be quoted here. In that paragraph, Dr. C said that Desyrel increased her susceptibility to have a seizure, which she had, and the seizure(s) are "directly related" to the work injury.

The carrier provided a peer review by a neurologist, Dr. D, which said that there is only a remote possibility that Desyrel could cause a seizure. He said also that the "probability" that this drug "played a part" in the car accident is very remote.

Claimant stated that, although Dr. P had her off work, he did release her after she had an injection, and she returned to work on August 17, 1998, and continued working until _____, when the car accident occurred. After that, Dr. P had her off work until September 30, 1998, while Dr. C on September 9, 1998, said she could not drive for six months.

Claimant testified that employer would not take her back to work based upon clearance from the ER to do light work, but rather allowed her to return when a physician she had seen would allow it. Claimant also testified that her work as a home health provider requires driving from place to place; employer has told her she need not return until she is able to drive.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. An injury caused by medical treatment for the compensable injury is itself caused by the compensable injury and is compensable; similarly, disability may be

found based on the condition that developed from the medical treatment for the compensable injury. *See* Texas Workers' Compensation Commission Appeal No. 92540, decided November 19, 1992, and Texas Workers' Compensation Commission Appeal No. 950938, decided July 24, 1995. While carrier states that the medical evidence only provides a possibility of causation between the drug and the seizure, Texas Workers' Compensation Commission Appeal No. 951417, decided October 9, 1995, pointed out that the substance of the medical evidence is more important than its form so that the words "reasonable medical probability," if not used, do not necessarily render the medical evidence insufficient to show causation. The hearing officer could reasonably interpret Dr. C's statement that the Desyrel lowered claimant's "seizure threshold enough" to result in two seizures and his statement of a sequence of events that included the neck pain, headaches, use of Desyrel, and subsequent seizures as all "directly or indirectly" related to the compensable injury, as showing sufficient causation. The determination that the compensable injury is a producing cause of cervical spine pain, headaches, right shoulder pain, and seizures is not against the great weight and preponderance of the evidence.

Carrier also states that Dr. C only kept claimant from driving due to a "generalized concern about the possibility of additional seizure . . ." and that Dr. P returned her to work on September 30, 1998. Texas Workers' Compensation Commission Appeal No. 961641, decided October 3, 1996, citing Texas Workers' Compensation Commission Appeal No. 91045, decided November 21, 1991, said that when a physician places a condition on a claimant even though it may not be stated in terms of "light" duty or a lifting limit, then disability has not ended when the fact finder assigns weight to that opinion. The hearing officer could also note that employer would not allow claimant to return to work under this condition of being unable to drive. The determination that claimant had disability from June 17, 1998, through August 14, 1998, and from September 5, 1998, through the date of hearing (February 9, 1999) is sufficiently supported by the evidence.

Carrier also asserts error in the admission of three exhibits offered by claimant. The hearing officer admitted them after claimant testified that she mailed all three exhibits to carrier at its Dallas address on December 14, 1998, the same day the benefit review conference was held. While claimant did not mail them to the attorney for carrier, Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) provides that the exchange be between the parties, or "one another." The hearing officer could credit claimant's statement that she mailed the documents to carrier, particularly when she described carrier's address correctly; when claimant's account is credited, exchange with the other party is sufficient under the 1989 Act and the relevant rules. The hearing officer did not err in admitting the three exhibits.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Alan C. Ernst
Appeals Judge

_____
Judy L. Stephens
Appeals Judge