APPEAL NO. 990542

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 10, 1999, a contested case hearing (CCH) was held. The issue concerned whether the appellant, who is the claimant, sustained blindness in his right eye as a result of his compensable injury of _____, and whether the loss of sight in both eyes entitled him to lifetime income benefits (LIBS).

The hearing officer found that the claimant did not prove that his compensable left eye injury was a cause of the subsequent loss of vision in his right eye, and that he was not therefore entitled to LIBS.

The claimant appeals. He recites from the record the facts that support his claim of injury, and contends that he established a medical link between the compensable injury and the later blindness of the opposite eye within reasonable medical probability. The respondent (carrier) responds by quoting from the record the evidence that it believes supports the decision. It argues that, contrary to the claimant's assertions, its doctor was unable to state within reasonable medical probability that there was a causal link.

DECISION

Affirmed.

It was stipulated that the claimant sustained injury to his left eye on _____, while operating a weed eater in the course and scope of employment with (employer). He sustained a laceration through the whole front of his eye, which he initially thought was a bee sting. The claimant suffered significant bleeding in his eye at the time of his injury. The claimant was around 50 years old when he was injured.

Dr. S, the claimant's ophthalmologist, testified by telephone at the CCH. He detailed the medical treatment of the injured eye, which included several operations and a corneal and lens transplantation. He stated that he referred the claimant to other specialists and did not see him for five to six years afterwards.

Dr. S stated that initially the treatment was concentrated on the claimant's left eye because of the laceration. However, he stated that an inflammatory process was present in the right eye that he stated "had been there probably before the incident" as ascertained from scarring in that eye. Dr. S did not believe that this inflammation happened at the same time as the injury to the left eye. He said that tests were run as a result to detect if the claimant had "sympathetic ophthalmia," a condition meaning damage to the eye caused by trauma to the opposite eye. He said that, while there is no 100 percent certain way to detect the condition, there will be a pattern of changes and retinal deposits on the eye.

Dr. S said that he and consulting doctors were not able to determine that the claimant had sympathetic ophthalmia. They considered, and rejected, the option of removing the injured eye to forestall further damage to the right eye.

Dr. S did not see the claimant again until he had lost the sight in his right eye. He examined the claimant on October 19, 1998. He said that the claimant had no sight in his right eye, and had 20/400 correctable vision in his left eye. He noted that the right eye was being reabsorbed by the claimant's body (called ptosis). Dr. S said that ptosis was not common and usually occurred when there had been a significant insult to the eye. Dr. S stated that the condition resulted from damaged vasculature of that eye as well as trauma to that eye.

Dr. S stated that the injury to the left eye "should not cause anything to the right eye unless . . . it were associated with some type of sympathetic reaction." He said that while he and other physicians could not find anything going on indicating such a reaction, neither could they find that it was not going on. Dr. S's only understanding of what the claimant's vision was like before his accident was that the claimant had said he was doing fine and had a driver's license. Dr. S said that when he first saw the claimant, he had 20/200 vision in his right eye with no correction. Dr. S said that this condition was present when he last saw the claimant at the end of 1991. Dr. S testified (and wrote in medical records in evidence) that no progressive disease of the right eye was indicated in 1991.

After seeing the claimant in 1998, Dr. S referred him to another eye doctor who specialized in inflammatory lesions of the eye, Dr. C, who he said also was unable to find "anything." Dr. S was asked by the claimant's counsel as to his opinion for the loss of sight in the claimant's right eye. Dr. S responded:

> . . . we really are sort of at a loss to tell you why the right eye became physical after the trauma unless it . . . it may have had some inflammatory reaction going on in there, and whether or not the trauma to the left eye caused it to be re-excited or what, we really don't have any idea. Don't have any way to know unless we take the right eye out and look at it, and that may not tell us.

The claimant's attorney then asked the same question but said he was asking Dr. S to state his opinion within reasonable medical probability. Dr. S responded that:

> I would have to say it's as reasonable as not that the trauma in the left eye had something to do with the loss of the right eye.

However, Dr. S again went on to reiterate the lack of explanation for the cause, in light of the fact that the claimant was not seen prior to his left eye accident. Dr. S said that the loss of the right eye was permanent, and that he did not believe that the left eye would worsen in the absence of an inflammatory process, which had not been detected.

On cross-examination, Dr. S agreed with a medical report of Dr. G that the claimant had uveitis and a corneal retinal inflammation in his right eye which was probably old and longstanding, as reflected by pigmentation and scarring in that eye, which Dr. S agreed would take years to build up. He agreed that such a condition could affect the vasculature of the right eye. Dr. S agreed that it was the consensus of the claimant's doctors that he did not have sympathetic ophthalmia. However, he also said that they did not know for certain that this was not the reason the claimant developed ptosis. Dr. S agreed that it was possible for someone to believe that they had a healthy eye but actually have problems. When the hearing officer asked Dr. S directly if he did not believe he had sufficient information to conclude within reasonable medical probability that the trauma to the claimant's left eye caused damage to the right eye, he agreed. Asked about the claimant's left eye, Dr. S said that the claimant was legally blind and could read large print with a magnification aid.

The claimant testified that while he was operating the weed eater, something came up out of the weeds and hit him in the eye, and it burned "like fire." He said he had never had problems with his eyes before this or worn glasses. However, he agreed that he had never gone for an eye examination prior to his injury. He recalled that problems with his right eye started about a month later, gradually. He stated that he currently could see only in a hazy fashion out of his left eye.

From the medical records in evidence, it appeared that the claimant was assessed with an 85% impairment rating by Dr. B. Dr. B examined the claimant on January 16, 1994, and he had visual acuity in both eyes of around 20/200, which she said was equivalent to legal blindness. She noted that the cause for the inflammatory process in the claimant's right eye had not been determined.

Other medical records in evidence essentially corroborate Dr. S's testimony. There are no medical records stating the likely cause of the right eye deterioration in a way which attributes it as a probable result of the left eye trauma. Dr. C wrote on January 26, 1999, that it was difficult to ascertain the cause of the right eye deterioration without having seen the claimant prior to his injury. On March 9, 1994, Dr. SH wrote that the claimant's poor vision in his right eye was due in part to a cataract and partly due to inflammation of an uncertain source. Dr. SH stated that sympathetic ophthalmia was not present.

We would agree that the connection between an initial injury in one eye, and the assertion that it spread at a later point in time to the opposite eye, involve matters beyond common experience, and medical evidence should be submitted which establishes the connection as a matter of reasonable medical probability, as opposed to a possibility, speculation, or guess. *See* Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992; Texas Workers' Compensation Commission Appeal No. 93774, decided October 15, 1993. It is the substance of the opinion that must rise to reasonable medical probability, not simply the use of those "magic

words." We cannot disagree with the hearing officer's determination that Dr. S's opinion did not prove causation within reasonable medical probability. If anything, Dr. S's statements attest to the fact that the claimant's doctors are at a loss to opine about the cause of right eye blindness. An assessment that the injury to the left eye is as likely a cause as it is not a cause does not rise to reasonable medical probability. What Dr. S was saying is that a connection between the two, or a lack of a connection, is an equally likely explanation. Dr. S indicated that in his opinion the inflammatory process in the right eye was preexisting, and that the ability of doctors to opine about a cause was hampered by the fact that the claimant had not been treated by any of them prior to his left eye injury. If anything, the medical evidence in this case is overwhelming in establishing that the connection of the right eye ptosis to the left eye injury is unknown.

Section 408.161(a)(1) provides that lifetime income benefits are paid in the event of "total and permanent loss of sight in both eyes." There was some question, had the hearing officer believed that bilateral loss occurred as a result of the _____, injury, as to whether the loss was "total," given Dr. S's testimony as well as the claimant's that he could actually see out of his left eye. Because we affirm the hearing officer's decision on the extent of the _____, injury, we do not reach and will not discuss this point.

Finally, we note that the matter of whether the subsequent injury fund would be liable for benefits under Section 408.162 was not before the hearing officer, and, in any case, would not affect the liability of the carrier in this case, as it is liable for the benefits payable due to the left eye injury.

We affirm the decision and order of the hearing officer.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge