

APPEAL NO. 990571

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 22, 1998. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an aortic dissection on _____; that he likewise did not sustain a compensable injury to his back, neck, and right knee on that date; and that he did not have disability because he did not sustain a compensable injury. In his appeal, the claimant asserts error in those determinations. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he was working for a car rental company. He stated that his responsibilities were to pick up the cars, clean them, and deliver them to the company's clients. He stated that he arrived at work at about 7:15 a.m. on _____ and that he cleaned two cars. He stated that he sent the first car through the car wash but then it broke so he had to wash the second car by hand. He explained that in addition to washing the cars, he cleaned the tires, put Armor All on the tires and the dashboard, washed the windows, and vacuumed. He testified that it was very hot that morning and that he was wearing a long sleeved shirt, tie, and slacks in accordance with the employer's dress code. He explained that after he cleaned the cars, he delivered a car to a client and then went to a body shop to pick up another car. He stated that as he was driving on the highway with that car, he developed severe chest pain and shortness of breath. He testified that he had to swerve off the road, that he hit the back of his head on the glass behind him at the time, and that he lost consciousness after he came to a stop at the side of the road. He testified that when he regained consciousness, he drove to the office and got out of the truck. He stated that he felt weak and his leg gave out on him as he stepped from the truck, causing him to fall to the ground on his right knee and roll over to his back. The claimant testified that he injured his neck, back and right knee, when he hit his head on the glass as he swerved off the road and when he fell to the ground getting out of the truck. He stated that he laid on the ground for a brief period and then he got up and "staggered" into the office. He testified that he was sweating profusely, that he was having trouble breathing, that he again lost consciousness inside, and that a coworker called the ambulance.

The claimant was taken by ambulance to (hospital 1), where he was diagnosed with dehydration and a "possible anxiety attack." The claimant stated that he did not return to work after he was discharged from hospital 1 because he had been advised to rest. He stated that his condition deteriorated and by Friday, (2 days after the date of injury), he went to the emergency room at (hospital 2). At hospital 2, the claimant was diagnosed with a "Type I aortic dissection with aortic insufficiency." On June 7, 1998, Dr. J surgically repaired the aortic dissection.

Dr. J, who is board certified in general and cardio-thoracic surgery, testified at the hearing. He stated that he was called to see the claimant on the day following his admission to hospital 2. Dr. J testified that a CT scan, echocardiogram and aortogram confirmed that the claimant had dissection of the ascending aorta with aortic insufficiency. Dr. J explained that an aortic dissection occurs when the inner layer of aorta tears, which permits the blood that would normally travel through the aorta to dissect between the layers of the aorta. Dr. J testified that the majority of aortic dissections occur in people with longstanding, untreated high blood pressure or who have predisposing aortic abnormalities. He stated that the claimant did not appear to have either congenital aortic abnormalities or a clear, longstanding history of hypertension; thus, Dr. J opined that, within reasonable medical probability, the claimant's aortic dissection resulted from elevation of blood pressure related to the strain of the work he was doing at the time the dissection occurred. On cross-examination, Dr. J stated that he has probably performed about 63 dissection repairs and that of the other cases he has treated, he was only convinced in one other instance that the patient's work contributed to the development of aortic dissection.

The carrier introduced the videotape deposition of Dr. P, who is also board certified in general and thoracic surgery. Dr. P testified that he had personally treated 45 to 50 cases of aortic dissection. Dr. P stated that it was "extremely unlikely" that a patient in the claimant's age group would have an aortic dissection without having some abnormality of their aorta. Dr. P stated that he suspected that the claimant had a form of Marfan's Syndrome, a connective tissue disorder that is commonly associated with aortic dissection, that only involved his cardiovascular system. In addition, Dr. P noted that the claimant had two episodes of high blood pressure at hospital 1, noting that hypertension is also strongly correlated with aortic dissection. Dr. P concluded that he could not see how the type of work the claimant was doing "could have had any influence on the dissection."

Mr. T, a manager with the employer, testified that he saw the claimant get out of his truck in the parking lot on _____, and that he did not see the claimant fall in the parking lot. Mr. T stated that when the claimant got inside, he was sweating heavily and having difficulty breathing. He testified that the claimant attempted to walk outside so another employee could take him to the hospital and his knees buckled. Mr. T stated that the claimant did not fall to the ground because the employee caught him, laid him on the floor, and called 911.

Initially, we will consider the claimant's assertion that the hearing officer erred in determining that he did not sustain a compensable injury in the form of an aortic dissection. The claimant argues that the hearing officer "applied the wrong legal standard" in resolving that issue by requiring that there be no preexisting condition. After carefully reviewing the hearing officer's decision, we cannot agree that he applied an incorrect legal standard in deciding that the claimant did not sustain compensable aortic dissection injury. The claimant concedes that expert evidence of causation was required in this instance. The hearing officer was presented with conflicting evidence on the causation issue. Dr. J opined that the claimant's strenuous activity at work in the heat caused the aortic dissection, noting that there was no evidence of longstanding, untreated hypertension or aortic abnormality in the claimant. However, Dr. P opined that the claimant's work did not

cause the aortic dissection, maintaining that it was caused by either aortic abnormalities, hypertension, or the combination of those factors. The hearing officer is the sole judge of the weight and credibility of the evidence under Section 410.165(a). As such, it was his responsibility to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. A review of the hearing officer's decision demonstrates that he simply was not persuaded that the evidence presented by the claimant was sufficient to sustain his burden of proving the causal connection between his work activities and the aortic dissection. Rather than indicating that the hearing officer applied an incorrect legal standard, we believe that the language emphasized by the claimant in his appeal demonstrates that the hearing officer found Dr. P's opinion to be the more credible opinion. He was acting within his province as the fact finder in so finding. Our review of the record does not reveal that the hearing officer's determination that the claimant did not sustain a compensable injury in the form of an aortic dissection is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The question of whether the claimant injured his neck, back, and right knee on _____, also presented a question of fact for the hearing officer to resolve. In his discussion, the hearing officer stated that even if the aortic dissection had been compensable, he would not have found that the claimant injured his neck, back, and right knee, noting that the claimant was not persuasive that the fall in the parking lot occurred or that if it did, that it caused additional damage or harm to the physical structure of the claimant's body. As the fact finder, the hearing officer was free to reject the claimant's testimony in favor of Mr. T's testimony that the claimant did not fall in the parking lot. Alternatively, the hearing officer could, and did, decide that he was not persuaded by the evidence that the claimant presented to show he had sustained additional damage to the physical structure of his body on _____. That determination was left solely to the hearing officer's discretion. Nothing in our review of the hearing officer's extent-of-injury determination demonstrates that it is so contrary to the great weight of the evidence as to compel its reversal on appeal. Pool; Cain.

Having affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we affirm his determination that the claimant did not have disability within the meaning of the 1989 Act, in that the existence of a compensable injury is a prerequisite to a finding of disability. Section 410.011(16).

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