

APPEAL NO. 990805

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 23, 1999, a hearing was held. She (hearing officer) determined that respondent's (claimant) compensable low back injury of _____, led to a psychological condition (depression). Appellant (carrier) asserts that claimant provided an "admission that the depression pre-existed this compensable injury" and that there is no medical evidence that the psychological condition is a direct and natural result of the compensable injury. Claimant replied that the decision should be upheld.

DECISION

We affirm.

Claimant worked for (employer) when, she testified, she hurt her back moving a patient on _____. The parties stipulated that claimant sustained a compensable injury on _____. The only issue at the hearing was whether a psychological condition (depression) resulted from the compensable injury. Claimant testified that she has had problems with weight gain in the past, but before the injury she weighed 40 pounds less than now. She did not testify (admit) that she had ever had depression prior to the compensable injury.

As carrier noted, claimant has been seen by several doctors. At least two doctors, Dr. M and Dr. S, thought that claimant's complaints were out of proportion to the objective evidence of injury. However, Dr. S, in providing his opinion at the end of April 1998, also thought claimant was not at maximum medical improvement. In addition, a nurse in July 1998 stated that claimant had "numerous emotional factors" over the past 15 years that contributed to her "recent depression"; this nurse did not say from whom or from what she was able to reach this conclusion, but, while appearing to agree that there was a "recent depression," she did not assert that claimant had depression during the prior 15 years. In addition, a physical therapist in February 1998 noted after "PMH," which probably is "prior medical history," the word "depression." Claimant's MRI for the low back shows a disc bulge at L4-5 that is "mildly effacing the thecal sac." That report also noted a past compression fracture at L1. An EMG was reported as normal.

After having a suicidal event in May 1998, claimant was seen in July 1998 by Dr. SC for another suicidal event. He diagnosed major depression, severe. Dr. G, in September 1998, said that claimant's medical records showed no previous psychological treatment; he did note that she had had multiple facet injections for her compensable injury and noted that she had gained over 40 pounds "due to steroid injections" for the injury. He said that the psychological condition is due to "trauma of the injury, weight gain from steroid injections, and resulting low self esteem." Dr. R in October 1998, wrote a letter to the Texas Workers' Compensation Commission (Commission) saying that he was asked to answer several questions. He examined claimant and found her to be "irritable and

emotional"; he noted "major depression"; he said he believes that her depression is related to the compensable injury, pointing out that she was functioning before and is not functioning now as she once had.

Carrier argued at the hearing that Texas Workers' Compensation Commission Appeal No. 951431, decided October 5, 1995, and Texas Workers' Compensation Commission Appeal No. 982074, decided October 15, 1998, stood for the requirement that medical evidence must show causation based on "reasonable medical probability." The first decision dealt with a determination of repetitive physical trauma which the fact finder said was based on 20 years of repetitive work. The appeals panel reversed, saying that medical evidence was necessary. The second dealt with migraine headaches in which a doctor said that he "assumed" they must be caused by an injection since they followed the injection.

While certain statements made in the case under consideration appear to say little more than that the claimant gave a history of no depression prior to the injury, Dr. G pointed out that medical records showed no prior history of treatment for depression and noted that claimant's weight gain was due to steroid injections for the compensable injury. He then stated that her psychological condition was based on the injury, the weight gain, and her resulting low self esteem. Dr. R was apparently appointed by the Commission to provide an opinion as to causation. His report was several pages long and did not show a mere history accepted by the doctor as part of the background information, but rather a detailed history based on question and answer that considered matters such as admissions and denials by claimant. In addition, Dr. R conducted a mental status examination.

Texas Workers' Compensation Commission Appeal No. 951417, decided October 9, 1995, quoted from Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975) in saying that the form of expert testimony is not as important as the substance, noting that when an expert is uncertain or only acknowledges that "everything is possible" is it necessary to close that gap by the doctor saying that the "chances weigh more heavily in favor of the causal relation" (reasonable medical probability). The Appeals Panel has found that medical evidence was not sufficient to support a determination of causal connection of a psychological problem to the compensable injury in Texas Workers' Compensation Commission Appeal No. 950949, decided July 17, 1995, but it had previously found that medical evidence, which did not even say that depression resulted from the compensable injury, was sufficient when coupled with significant other evidence, including medical evidence of depression, fear of toxic fumes, and a diagnosis of post-traumatic stress disorder in Texas Workers' Compensation Commission Appeal No. 94216, decided April 12, 1994.

The medical evidence in the case under review provided sufficient support for the determination that claimant's compensable low back injury extends to claimant's psychological condition (depression).

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:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge