

## APPEAL NO. 990860

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 30, 1999. She determined that the appellant's (claimant) post-traumatic stress disorder (PTSD), depression, and cervical sprain were not a result of his compensable injury of \_\_\_\_\_; that the claimant did not have disability; and that the respondent (self-insured) waived the right to dispute the compensability of the cervical sprain. The claimant appeals the extent-of-injury and disability determinations, expressing his disagreement with them. The self-insured replies that the decision is correct, supported by sufficient evidence, and should be affirmed. The determination of carrier waiver of the compensability of the cervical sprain has not been appealed and has become final. Section 410.169.

### DECISION

Affirmed.

The claimant worked as a mental health technician for the self-insured. He normally worked the night shift on weekends and during the week only when called by the self-insured. He testified that on \_\_\_\_\_, he was called to an emergency to help restrain a patient. In the process, he said, he was struck about five times with the patient's elbow. He said he was hit mostly in the head, but also in the neck and back and that his physical injuries were primarily to the head and neck. He first received medical care at a hospital emergency room (ER). Records of this visit reflect complaints of dizziness and blurred vision. The records also reflect no evidence of head trauma. X-rays of the cervical spine were normal as was a CT scan of the head. The diagnosis was head and neck contusions. He was restricted to bed rest until September 8, 1998, and released to full duty on September 9, 1998.

Payroll records reflect that the claimant worked each succeeding weekend. He said that on October 25, 1998, while at work, his condition changed for the worse and he has not worked since. On this date he had a meeting with Ms. L, the nurse manager, to discuss complaints of insubordination and inappropriate behavior in front of the patients, primarily in the nature of refusing to do work assigned by nurses. On October 29, 1998, the claimant saw Dr. H, who had been treating him for a 1993 work-related inhalation injury while working for another employer. Dr. H, in his notes of this visit, recounted the incident of assault and said the claimant still suffered from severe headaches and dizziness. He placed the claimant in an off-work status until November 2, 1998, which was subsequently renewed. In a letter of December 7, 1998, Dr. H wrote that at an examination of November 10, 1998, the claimant was complaining of headaches, blurred vision, dizziness and shaking, and neck stiffness following the incident in early \_\_\_\_\_. He prescribed medication and diagnosed post-traumatic headaches, cervical sprain, PTSD, and said he was unable to work.

Dr. H's Initial Medical Report (TWCC-61) for the 1993 injury diagnosed chronic daily headaches, PTSD, shortness of breath and dizziness, and reactive airway dysfunction syndrome. In other reports he diagnosed a cervical sprain. These conditions were apparently caused by an "inhalation of contaminated air." In a letter of July 13, 1995, Dr. H diagnosed cervical sprain, organic brain syndrome due to anoxia of toxic fumes, and an elbow bursa. A cervical MRI of September 11, 1995, was read as showing bulging at C5-6 and C6-7.

The claimant testified that his prior injury "has nothing to do with his current condition." He said that the assault by the patient on him on \_\_\_\_\_, was a very traumatic experience for him because he was not able to work a full shift thereafter. He conceded that the first medical evidence of treatment after his ER visit was after the October 25, 1998, meeting, but insisted he had gone to another doctor, whose name he had forgotten, between the ER visit and the October 25, 1998, meeting.

Ms. L testified that the claimant never complained after \_\_\_\_\_, about any ongoing problems; that he was never unable to work his shifts; that he never declined work; and that he never asked for medical treatment. In rebuttal testimony, the claimant denied ever speaking with Ms. L until the October 25, 1998, meeting.

As noted above, the parties stipulated on the record that the claimant "sustained a compensable head contusion injury" on \_\_\_\_\_, for which the carrier accepted liability. In his appeal, the claimant asserts that this stipulation as recorded in a Finding of Fact No. 1d is "incorrect" in that it "minimizes" the nature and seriousness of this injury. This finding of fact accurately reflects the actual stipulation. The claimant is bound by the stipulation and we find no error in its wording. In any case, compensable head injury was never an issue in this case. The claimant was not restricted in his testimony about what happened on \_\_\_\_\_, and that a head injury was but one part of the injuries he claims to have sustained on this date.

Section 401.011(26) defines injury as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." The claimant had the burden of proving that his cervical sprain was caused by the trauma and that his depression and PTSD naturally resulted from the trauma of \_\_\_\_\_. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether this causal connection existed was a question of fact for the hearing officer to determine. She found that neither the medical evidence nor the claimant's testimony was sufficient to establish this causal link. In his appeal of this determination, the claimant argues in effect that the hearing officer, not being medically trained, was bound to accept the opinion of Dr. H on this question. Pursuant to Section 410.165(a), the hearing officer is the sole judge of the weight and credibility of the evidence. In her role as fact finder, she could accept or reject in whole or in part any of the evidence, including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this case, there was evidence of long-standing PTSD and organic brain dysfunction which Dr. H simply linked to the incident on \_\_\_\_\_.

The hearing officer was not satisfied that such a summary conclusion was persuasive or, presumably, that the incident described by the claimant was sufficiently traumatic to cause depression and PTSD. With regard to the claimed cervical sprain injury, the hearing officer found more persuasive the contemporaneous medical reports of the hospital ER room than Dr. H's diagnosis some six or seven weeks later. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong 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). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the evidence for that of the hearing officer, but find the evidence deemed credible by the hearing officer sufficient to support her resolution of the causation issue.

Disability is defined as the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Whether disability exists is a question of fact and can be proved by the testimony of the claimant alone if found credible. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The claimant testified without specificity as to dates or times that he had to leave his shift early or was unable to work during the week, presumably when called by the employer. The claimant acknowledged that he would be sent home early from his normal shift if the number of patients was low. Payroll records show regular weekend work up to October 25, 1998. Ms. L testified that the claimant was not called to work during the week and that he did not reject any offered work. From this evidence, the hearing officer found no disability before October 25, 1998. As to the period after this date, the hearing officer did not find disability based on the nature of the compensable injury, that is, a neck sprain, and a comment of the claimant in a recorded telephone interview that he objected to working nights because of who his supervisor would be, not because of any injury. Under our standard of review, we find the evidence sufficient to support this determination and decline to reverse it on appeal.

In his appeal, the claimant also suggests bias on the part of the hearing officer as reflected in her personal preference and pride and the general undue familiarity between carrier representatives and the staff of the Texas Workers' Compensation Commission. He also asserts that the hearing officer was cutting off his rights because he was still receiving medical care and not yet at maximum medical improvement. These latter matters were not in issue at the CCH. We find no support in the record for the claimant's allegation of bias on the part of the hearing officer or that she otherwise violated his statutory rights as an injured worker.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Philip F. O'Neill  
Appeals Judge