APPEAL NO. 991113

On May 7, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). The issue at the CCH was whether respondent's (claimant) depression is a result of the compensable injury sustained on _____. The hearing officer decided that claimant's depression is a result of his compensable injury of _____. Appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. No response was received from claimant.

DECISION

Affirmed.

It is undisputed that claimant sustained a compensable back injury on _____. Claimant testified that he is 34 years of age; that he has a 12th grade education; that he began working for the employer as a welder in 1986; that on _____, he felt numbness in his left leg when he was on his knees working and that he then had back pain when bent over welding; that he was initially treated by (Dr. P); that (Dr. W), who is his family doctor, is his current treating doctor; that he has been treated with physical therapy, epidural injections, pain medications, and antidepressants for his injury of _____; that prior to his injury of _____ he was happy and was doing good and did not take medication for depression; that he began experiencing depression shortly after his injury of _____ because of his pain and inability to work and live a normal life due to pain; that shortly after he began seeing Dr. P for his injury of _____, Dr. P prescribed antidepressant medication; that he still has left leg numbness and sharp back pain and is depressed; that he began going to a state mental health agency in December 1996 and continues to go there once a month; and that a psychiatrist at the mental health agency prescribes antidepressant medication for him.

Claimant further testified that he was diagnosed as having attention deficit disorder (ADD) when he was about five or six years old; that he was given medication for his ADD; that he stopped taking that medication at some unspecified time; that he has been married twice; that his second marriage was in July 1996; that in October 1996 his wife had surgery; that in December 1996 he and his wife separated; that his wife filed for divorce in 1997; that about a year before his _____ injury Dr. W prescribed Adderall for him to take to help him with his concentration; that that medication showed up in his drug test when he was injured; and that he has lived with his mother for approximately the last two and one-half years.

Claimant's mother testified that claimant has lived in a trailer behind her home for about the last two years; that prior to his back injury of _____, she saw claimant a lot

and claimant was happy and well-adjusted; that claimant took medication for attention deficit hyperactivity disorder (ADHD) in high school; that claimant did not again take medication for ADHD until he went to Dr. W about a year before his injury of _____; that she thinks that claimant was on Wellbutrin and then on Adderall; that Adderall was for claimant's ADD or ADHD; that claimant did not have any neonatal brain trauma; that claimant was not upset when his second wife had surgery in October 1996; that claimant's divorce from his second wife did upset him; that from shortly after his injury of _____ until claimant and his second wife separated in December 1996, claimant had violent outbursts and was depressed; that claimant takes medication for pain, anxiety, and depression; that claimant did not take medication for depression prior to his injury of _____th; and that after the injury of _____ claimant had pain and, because of his depression, his second wife left him.

Dr. P referred claimant to (Dr. G) in October 1996 for pain management and Dr. G wrote that an MRI done on September 26, 1996, indicated mild narrowing at L4-5 with desiccation, no significant disc degeneration, bulge, or herniation at L5-S1, and conjoined nerve roots along the left S1 and S2 nerve roots; that claimant has a history of ADD and hyperactivity for which he was taking Adderall at the time of the initial evaluation; that at the time of the initial evaluation claimant was also taking medications for depression, anxiety, and pain; that based on his examination and interview there appeared to be evidence of nerve root irritation at L4-5 on the left; and that claimant should undergo back therapy. Dr. G noted in late October 1996 that electrodiagnostic studies were abnormal, with evidence that was suggestive of, but not diagnostic of, a left L4-5 nerve root irritation. Dr. G wrote in February 1997 that claimant continued to have pain, that (Dr. B) had recommended an epidural injection, and that claimant was displaying symptom magnification. Dr. G reported in March 1997 that claimant had reached maximum medical improvement (MMI) with a four percent impairment rating (IR) for abnormal lumbar range of motion.

Dr. W referred claimant to (Dr. MA), who wrote in April 1997 that the lumbar MRI was normal except for disc dessication at L4-5, that there was little objective evidence of any pathology, that a lumbar epidural injection might be considered, and that claimant is not a surgical candidate. (Dr. MI) reported in June 1997 that he is the designated doctor, that claimant reached MMI that month with an eight percent IR for impairment of the lumbar spine, and that claimant showed symptom exaggeration.

Dr. W noted in May 1997 that claimant was still depressed and that he, Dr. W, suggested that they add Wellbutrin to claimant's medications. Dr. W reported in June 1997 that claimant reached MMI in May 1997 with a zero percent IR.

Claimant began going to the state mental health agency in December 1996 and records from that agency note that claimant had separated from his wife, that his wife had filed for divorce, that he had a work injury, that he had not been able to work since the injury, that he lost his job, that he suffers from constant back pain, that he has a family

history of depression, that he had ADHD since childhood, and that he has major depression, chronic back pain, bipolar disorder, and a dependent personality. (Dr. T), a psychiatrist at the state mental health agency who has seen claimant, wrote in February 1999 that claimant suffers from bipolar disorder mixed with psychosis and that claimant is totally and permanently disabled from working due to his mental illness, borderline intellectual function, and medication side effects.

Dr. W wrote in October 1997 that claimant was still disabled and unable to work due to pain, that a repeat MRI had been denied, that a repeat MRI is needed to rule out surgical lesions, and that he had concurred with Dr. MI's MMI and IR report. Dr. W wrote in November 1997 that claimant has chronic back pain and that he was taking antidepressants. In August 1998, Dr. W wrote that claimant continued to have pain, that he was still unable to work and was depressed, and that Dr. MI had not mentioned a psychological or psychiatric injury in assessing the IR. In October 1998, Dr. W wrote that claimant was struggling emotionally, that he had antidepressants added to his medical regimen, that he had become impotent, and that "I feel that all of this is related to his depression regarding to his inability to get up and work and keep functional, as well as his back pain that has persisted."

Claimant had the burden to prove the extent of his compensable injury. Texas Workers' Compensation Commission Appeal No. 960733, decided May 24, 1996. The hearing officer determined that claimant's depression is a result of the compensable injury sustained on _____. The carrier's appeal is based in large part upon facts not in evidence, such as its allegation that bipolar disorder is often misdiagnosed as ADD. Carrier states that Wellbutrin is given for depression and that claimant testified that he was prescribed that medication before his _____, injury. Claimant did not testify that he was prescribed Wellbutrin prior to his injury. He testified that he was taking Adderall that had been prescribed by Dr. W for his concentration problem. Claimant's mother's testimony indicated that claimant may have been on Wellbutrin prior to claimant's injury, but, Dr. W's notes reflect that Wellbutrin was not suggested until May 1997. Carrier states that claimant does not suffer from anything other than bipolar disorder. However, the records from the state mental health agency also note major depression. Dr. W's reports also note that claimant was depressed and Dr. W relates claimant's depression to his inability to work and his persistent back pain.

The 1989 Act makes the hearing officer the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. An appellate body is not a fact finder and does not normally pass upon the credibility of the witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. When reviewing a hearing officer's decision to determine the

factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge