

APPEAL NO. 991350

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 June 1, 1999. He (hearing officer) determined that the compensable injury of the appellant (claimant) is not a producing cause of claimant's gastric carcinoma (cancer). Claimant challenges this determination on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends that the hearing officer erred in determining that her compensable injury is not a producing cause of her gastric carcinoma. Claimant asserts that: (1) she had gastric ulcers before August 29, 1997; (2) one exhibit did not list all the medications claimant was taking, specifically Felden; and (3) her impairment rating included impairment for her ulcers and "any change of it." Claimant contends that any condition pertaining to her ulcers should be considered part of the compensable injury.

Claimant had the burden to prove by a preponderance of the evidence that the stomach cancer was caused by medications claimant took for her compensable injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). This question of the cause of the cancer had to be proved by expert evidence to a reasonable medical probability. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 941583, decided January 9, 1995. Claimant was not required to prove that the medications were the sole cause of the cancer, but only that it was a producing cause of the cancer. See Texas Workers' Compensation Commission Appeal No. 962391, decided January 8, 1997. The use of "magic words" by an expert does not in itself establish causation, but that the substance of the expert evidence, including the reasons given for the opinions expressed, must be considered in resolving the issue of causation. See Texas Workers' Compensation Commission Appeal No. 950455, decided May 9, 1995; Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992.

Carrier accepted liability in this case for claimant's ulcers. Claimant testified that she was treated with various medications for her 1993 compensable injury to her back and other body parts. Claimant said she developed back pain and she went to see Dr. GO. She said that after testing, she was told that the pain was due to a gastric ulcer. Claimant said she later developed stomach cancer.

The hearing officer determined that: (1) claimant sustained a compensable injury on _____, and was prescribed various medications; (2) claimant was diagnosed with a gastric ulcer on July 27, 1996; (3) the medications caused claimant's gastric ulcer; (4) on March 24,

1998, claimant was diagnosed with a malignant adenocarcinoma of the stomach; (5) the medical evidence establishes that the medications claimant took “have not been linked to adenocarcinoma of the stomach”; and (6) the compensable injury of _____, is not a producing cause of claimant’s cancer.

The hearing officer considered the evidence and concluded that claimant’s cancer was not related to the medications she took for her compensable injury. In her appeal of this determination, claimant contends that the evidence did show a causal link. Claimant points to evidence in the record that she contends supports her request for review. Whether the cancer was caused by claimant’s medications was a question of fact for the hearing officer to decide. We will not reverse his determinations unless they are so against the great weight and preponderance of the evidence as to be clearly erroneous and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Section 410.165(a) provides that the hearing officer, as fact finder, is the sole judge of the weight and credibility to be given the evidence. In the discharge of this responsibility, the hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this case, the evidence conflicted regarding causation. The hearing officer could have chosen to credit the medical evidence from Dr. G and Dr. A in concluding that the medications did not cause or lead to claimant’s cancer. The hearing officer could judge the credibility of the medical evidence and conclude that claimant did not meet her burden of proof regarding causation in this case. See Texas Workers’ Compensation Commission Appeal No. 94103, decided March 7, 1994.

We affirm the hearing officer’s decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Dorian E. Ramirez
Appeals Judge