APPEAL NO. 991409

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 15, 1999. With respect to the single issue before her, the hearing officer determined that the respondent's (claimant) anxiety and depression are a result of the compensable injury sustained on _____. In its appeal, the appellant (self-insured) argues that the claimant's evidence was insufficient to sustain her burden of proof within reasonable medical probability. In her response to the self-insured's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury to her right arm and shoulder on _____, as a result of performing repetitive work activities. The claimant underwent an ulnar nerve release in November 1995 and a lateral epicondylar release in July 1996. Claimant treated with Dr. H, an orthopedic surgeon, who referred her to Dr. G, a neurologist. Dr. G performed an initial evaluation of the claimant on October 15, 1996. In a report dated October 18, 1996, Dr. G stated that the claimant has concomitant depression, noting that she "admits to significant degrees of depression, although no suicidal thoughts, essentially with her chronic pain syndrome." In a letter of November 10, 1997, Dr. G stated:

> From my standpoint, neurologically, she has a depression; 75% of chronic pain patients have depression that needs to be treated clinically. I defer to [Dr. R], her psychologist, for her actual ongoing condition and diagnosis. I believe that this condition is directly related or resulting from her on-the-job injury.

Dr. R testified at the hearing that he began seeing the claimant on June 16, 1997. He stated that he concurred in the diagnosis of anxiety and depression and in the opinion that her anxiety and depression were directly related to the chronic pain resulting from her compensable injury. Dr. R stated that he is treating the claimant's anxiety and depression with a combination of cognitive therapy and hypnosis, explaining that the hypnosis is to help her work through her pain.

A records review was performed by a managed care neurologist physician advisor on behalf of the self-insured. In that report, an unidentified physician opined that the claimant had "altered mood associated with chronic pain syndrome, question of depression." With respect to causation, the report provides:

> I do not believe that the depression is solely related to the on the job injury of (preinjury date). I suspect the injury and the chronic pain syndrome is a contributing factor, but it is not the sole source of her depression.

At another point in the report, the neurologist physician advisor opined that the "depression symptoms are exacerbated by the injury, but not a sole cause of the problem."

The self-insured introduced a June 24, 1996, report from Dr. C, the designated doctor. Dr. C certified that the claimant had a zero percent impairment rating (IR) for her upper extremity injury, noting symptom magnification and "global hyperalgesia type symptoms." Dr. C did not consider or discuss anxiety and depression in his report. The carrier also introduced a report from Dr. F in which Dr. F opined:

> [T]he medical treatment herein has been unreasonable and unnecessary. In my opinion, the claimant had no injury which would have produced a need for a right ulnar nerve transfer or lateral epicondylar release.

The hearing officer determined that the claimant sustained her burden of proving the causal connection between her compensable injury and the anxiety and depression. That question presented a question of fact for the hearing officer to resolve. However, because the causal connection between the claimant's compensable injury and anxiety and depression is beyond common experience, medical evidence of causation, to a reasonable degree of medical probability, was required. The hearing officer is the sole judge of the weight and credibility of the evidence under Section 410.165(a), including the medical evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As such, it was her responsibility to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. In her discussion section, the hearing officer stated that "[t]he expert medical evidence presented does rise to the level of reasonable medical probability causally relating the Claimant's depression and anxiety to her _____ compensable injury." The hearing officer noted that Dr. G, Dr. R, and the managed care neurologist physician advisor all rendered an opinion that the claimant's compensable injury was a producing cause of her depression and anxiety. The hearing officer was acting within her province as the fact finder in deciding to credit that causation evidence. Our review of the record does not reveal that the hearing officer's determination that the claimant's anxiety and depression are a result of her compensable injury 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 self-insured asserts that Dr. R's opinion does not rise to the level of medical evidence of causation because he is a not a medical doctor. We need not reach the issue of whether Dr. R's opinion would be sufficient, in and of itself, to satisfy the need for medical evidence of causation in this case because there are a also causation opinions from Dr. G, a neurologist, and the managed care neurologist in evidence, stating that the claimant's compensable injury was a cause of her anxiety and depression. Finally, we cannot agree with the self-insured's contention that the fact of a zero percent IR from the designated doctor and an opinion from Dr. F that there was no injury which produced the need for surgery in this instance conclusively established that the claimant cannot satisfy the requirement of proving a causal connection between her compensable injury and the anxiety and depression. At most, those were factors for the hearing officer to consider in resolving the issue before her. The hearing officer decided to give more weight to the

opinions that there was a causal connection between the claimant's compensable injury and her anxiety and depression. As the fact finder under Section 410.165, she was permitted to do so. The fact that another fact finder could have drawn different inferences from the evidence, which would have supported a different result, does not provide a basis for reversing the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Joe Sebesta
Appeals Judge