

APPEAL NO. 991467

Following a contested case hearing held in Harlingen, Texas, on June 1, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant's (claimant) diagnosed post-traumatic stress disorder (PTSD), including depression, anxiety, insomnia, stress, and phobia, did not result from the _____, compensable injury. Claimant has appealed, asserting error in the exclusion of two exhibits and the insufficiency of the evidence to support four factual findings and the dispositive conclusion. The respondent (carrier) urges in response that the hearing officer did not abuse her discretion in excluding the exhibits and that the evidence sufficiently supports the challenged findings and dispositive conclusion.

DECISION

Affirmed.

The parties stipulated that on _____, claimant sustained compensable injuries to his neck and back. Claimant testified through a Spanish language interpreter that on that date, he was a passenger in a truck which was involved in a motor vehicle accident (MVA) and that his neck, left hand, and right knee were injured; that he has headaches and neck pain and cannot work even though Dr. K released him for work; that he cannot cut the grass and do similar tasks; that he has problems driving because of dizziness and inattention; that he cannot be with friends and carry on conversations as he used to; and that he feels worn out. He indicated that he now has money problems from not working and that his wife is concerned about the bills being paid. Claimant further stated that he attributes all of these problems to the MVA; that he told the doctors about his psychological problems; that he had no prior psychological problems; and that Dr. S, who he said is not being paid, has doubled the dosage of his medications.

Claimant's wife, Ms. P, testified that she and claimant have been married for 19 years; that before the September 1996 MVA claimant was an active person; that he has been taken to the emergency room on various occasions for treatment of his head pain; that he has become very irritable and doesn't get out of bed; and that he imagines things.

Dr. K's treatment records from June 23 to September 3, 1997, reflect that his impression included post-traumatic anxiety and that on September 12, 1997, Dr. K added depression to the diagnosis.

The October 14, 1998, letter of Dr. MP, a neurologist, states that he has been treating claimant since October 1997; that claimant has had neck pain and severe headaches since the MVA; that claimant has been suffering chronic neck, back, arm, and leg pain; and that he feels the chronicity of the pain from the work-related injury has affected claimant psychologically and that claimant's anxiety and depression are directly related to his work injury.

Dr. S's March 17, 1999, letter states that claimant has not worked for the last two years because of neck pain, headaches, nervousness, and tenseness; that he complains of dizziness and pain in both arms and legs; that he is withdrawn, isolating, not socializing, not going out, and not able to work; that he has constant fear, anxiety, and phobia; and that he is having difficulty sleeping with nightmares and flashbacks. In Dr. S's opinion, claimant has PTSD.

The carrier introduced the records of Dr. M and Dr. RP, both of whom provided claimant with chiropractic treatment after the MVA injury; the treatment records of Dr. MP which reflect that he treated claimant for a work-related back injury from November 1992 until September 1996; the January 22, 1998, report of Dr. KR, a required medical examination doctor requested by the carrier; and the December 15, 1998, report of Dr. G, a designated doctor, all for the purpose of showing that none of these records, aside from the reports above mentioned, discussed the claimed PTSD injury, much less its causation.

Claimant had the burden to prove by a preponderance of the evidence that his diagnosed PTSD injury including depression, anxiety, insomnia, stress, and phobia resulted from the _____, compensable injury (Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ)) and this issue presented the hearing officer with a question of fact to resolve (Texas Workers' Compensation Commission Appeal No. 962389, decided January 2, 1997). Since the matter of the causation of the diagnosed PTSD claimed in this case is not one of common knowledge, expert medical evidence was required. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in 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 detailed factual findings and a discussion of the evidence the hearing officer makes clear why she was not persuaded by the opinions expressed by Dr. MP and Dr. S on causation and she mentions various conflicts and inconsistencies in the evidence which she, as the fact finder, resolved against claimant. *Compare* Texas Workers' Compensation Commission Appeal No. 982529, decided December 14, 1998. As an appellate reviewing body, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer sustained the carrier's objection and excluded from evidence Claimant's Exhibit No. 5, a list of medications dispensed by (pharmacy) to claimant over the period from "07/9/97" to "03/03/99," and Claimant's Exhibit No. 6, a letter (written in Spanish but translated on the record at the hearing) dated March 25, 1999, from Dr. L of (state). The hearing officer did not find good cause for these exhibits not having been

exchanged by claimant with the carrier within 15 days after the benefit review conference (BRC) held on February 18, 1999, as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13 (Rule 142.13). Claimant did not dispute that he failed to exchange these exhibits with the carrier until answering the carrier's interrogatories on March 26, 1999. He argued, however, that the carrier was "not surprised" by the information in these documents, that the carrier was "hiding behind the rule," and that the discovery rule is to be "liberally construed" and not applied in a manner "so tough on claimants that they can't bring in their evidence." The hearing officer, noting the predominant number of prescriptions written before the BRC and that Dr. L's letter referred to his having treated claimant on several occasions in 1997 for problems relating to anxiety and depression, determined that claimant failed to show good cause in waiting, apparently, until some time in March 1999 to request these documents. We are satisfied that the hearing officer did not abuse her discretion in her rulings excluding these documents. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). Further, to obtain reversal of a decision based upon the erroneous admission or exclusion of evidence, it must be shown that not only did the hearing officer err in the ruling but that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 92068, decided April 6, 1991.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Dorian E. Ramirez
Appeals Judge