APPEAL NO. 991511

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 16, 1999, a hearing was held. He (hearing officer) determined that appellant's (claimant) compensable injury did not extend to his neck or his shoulder, did not cause hair loss, and did not extend to attention deficit and hyperactivity disorder (ADHD); he also found that disability ended June 12, 1998, and that there was a bona fide offer of limited work on June 12, 1998. Claimant asserts that medical testing shows that he has several brain and psychological conditions and that the injury aggravated his ADHD; he also states that employer did not contact "the treating doctor" in regard to restrictions of claimant's work in saying that a bona fide offer of work was not made; finally, he says that disability should have been found, citing the report of a required medical examination doctor. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on July 23, 1997; he testified that he and others were placing a plastic liner in a pit. He said when he "woke up," it was still raining. He added that he did not know what happened and did not see the body of his supervisor. (The evidence showed that claimant was walking near his supervisor-- one medical record says six feet away--when the supervisor was struck and killed by lightening.) Claimant had what were described as flash burns, or as abrasions, on his face and other parts of his body due, at least in part, from his falling or being thrown to the ground. There was no Section 406.032(1)(E) issue regarding an act of God.

Neither party provided medical records from the first two and one-half months of treatment. The initial medical record submitted by both parties is an October 8, 1997, letter of Dr. B, which said that claimant "has been working" but has had too much sun exposure and needs to cover certain areas with "heavy pigmentation" zinc oxide; he alluded to treatment of hyperpigmentation. A short, undated note from Dr. B, with a similar date of receipt to that on the October 8, 1997, letter, was also in evidence, stating that claimant could return to duty with "burn spots protected." The comments of the parties at the hearing indicate that claimant resumed work on October 14, 1997, and worked until he "quit working" on a date claimant said he did not know; carrier's record of payment of temporary income benefits (TIBS) indicated that claimant began to receive TIBS again on April 27, 1998; there was then some discussion that claimant may have worked through April 26, 1998.

The evidence showed that claimant was seen by Dr. M, (Ph.D in psychology) on three dates in May 1998. Dr. M does not state under what auspices he saw claimant, but claimant's appeal indicates that claimant saw Dr. M on the referral of Dr. Bu, a neurologist, whose record of seeing claimant in December 1997 is in evidence; Dr. Bu also did not

indicate on what basis he saw claimant. Dr. M's report, however, indicates that claimant "had been under [Dr. Bu's] care for several months." (The record of hearing includes that Dr. Bu conducted or ordered a study showing a normal brain stem auditory evoked response, an EEG that was within normal limits, and an MRI without contrast of the brain which was normal.) Dr. M related the history of "abrasions"; he added that claimant was concerned about a memory problem, but said "his memory deficit measured during this examination suggest the possibility that these may be consistent with his premorbid functioning." He also said, "[h]e appeared to be extremely hyperactive and it is likely that this particular level of hyperactivity which reportedly he had problems with prior to his accident, may have been the problem that interfered with his education in high school." Dr. M concluded:

> Most of [claimant's] functions, even though measuring mild neuropsychological impairment, appear to be consistent with a chronic condition that may have existed over many years. Furthermore, his psychological profile, as well as background and history, appears to be consistent with an individual who is inattentive, impulsive, hyperactive, and who has a history of learning problems.

Dr. M provided a short letter on June 12, 1998, saying that there appeared to be no restrictions on claimant's ability to do his work and said that, based on his evaluation, claimant was released to return to work. (On March 17, 1998, Dr. B answered questions from carrier indicating that claimant can work with "total block sun screen," which may be compared to his October 1997 release to work for claimant which called for "burn spots" to be "protected."

Employer dated an offer to claimant to work in his prior position under the restriction of "protect face from sun" which said it would be open to June 19, 1998. Dr. B and Dr. M were referred to as "treating doctors." Claimant acknowledged that he did not answer that offer and did not return to work. Claimant signed a return receipt, which was represented to have been in response to the written offer of work, on June 16, 1998. Claimant thereafter, on June 29, 1998, requested that his treating doctor be changed from Dr. B to Dr. P. Claimant then began seeing Dr. P on June 29, 1998, with Dr. P taking him off work on July 20, 1998. The evidence does not show that Dr. P was claimant's treating doctor or had even treated claimant at the time employer made the written offer of restricted work to claimant. The offer of work adequately meets the requirements of Section 408.103(e) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.5 (Rule 129.5). Since there was evidence that Dr. B was the treating doctor at the time of the offer and since claimant had not changed his treating doctor to Dr. P as of June 16, 1998, when he received the offer, the hearing officer's determination that claimant received a bona fide offer is sufficiently supported by the evidence.

The hearing officer's determination of no disability past June 12, 1998, appears to only be supported by the opinion of a psychologist, Dr. M, since there is no indication that Dr. B released claimant without restrictions. However, the hearing officer has broad latitude in accepting or rejecting medical evidence, and the only restriction imposed by Dr. B did not

limit claimant in any activity (such as lifting) or in any environment (such as in the presence of certain chemicals) but only told claimant to protect himself from the sun by using sun blocker. Even though Dr. P thereafter took claimant off work, the weight to give Dr. P's opinion, or that of any other doctor, was for the hearing officer to decide. In addition, a required medical examination performed by Dr. dW in October 1998 indicated that claimant would do "better" in employment indoors than outdoors. Dr. dW later said in April 1999 that claimant's restrictions should be indoors, with no dangerous machinery and under close supervision.

In conjunction with the discussion of disability in the preceding paragraph, attention must be directed to claimant's appeal of the determination that said his injury did not include an injury to, or aggravation of, his ADHD. Dr. M indicated that claimant's condition was a chronic one. Dr. B, at least in the limited records the parties provided to this hearing, did not discuss these conditions and did not provide for any limitations in relation to ADHD when he released claimant subject to the use of sun blocker. Dr. Bu said in December 1997 that it would be difficult to tell whether claimant had any "cognitive loss because of no previous psychometrices on this patient prior to his injury," but his neurologic examination showed "no objective findings of focal deficit." Dr. P assessed post-traumatic stress disorder among others including "musculoskeletal disorder." (Dr. P ordered an MRI of the cervical spine which was normal, an "MRI of the brain w/wo contrast" which was normal, and an "M.R. angiogram of the brain" which identified no abnormalities.) Dr. dW said her impression included "[ADHD]" but she did not say, in regard to this condition, that it was related to the injury. She also included in her impression "anxiety disorder," which she did relate to claimant's "near death experience" when injured.

While it might be said that an anxiety disorder could aggravate an ADHD, the hearing officer does not indicate that he drew that conclusion or even that he agreed with Dr. dW's assessment of an anxiety disorder in the face of no such diagnosis by Dr. B or Dr. M. The hearing officer could choose to give more weight to the opinions of Dr. B and Dr. M than he did to that of Dr. P, and, in considering the issues before him, he could consider that Dr. dW did not say that claimant's injury aggravated his ADHD. The evidence sufficiently supports the determination that claimant's injury did not include ADHD, along with the other possible injuries in issue, such as injury to the neck, which were not found to be part of the injury, but which were not appealed.

The hearing officer, in determining that disability ended on June 12, 1998, could consider that Dr. dW, in referring to restrictions on use of dangerous machinery and in saying that claimant should be closely supervised, was most probably referring to his ADHD which was not found to be part of the compensable injury. We cannot say that the determination that disability ended on June 12, 1998, when Dr. M said that claimant was released to work, in the circumstances of this case, was so against the great weight and preponderance of the evidence as to be wrong.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge