

## APPEAL NO. 991529

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 23, 1999. With regard to the two issues before him, the hearing officer determined that appellant's (claimant) compensable (low back L5-S1) injury of \_\_\_\_\_, does not extend to and include the Hepatitis C infection and that claimant is not entitled to supplemental income benefits (SIBS) for the 12th compensable quarter. The hearing officer's decision regarding the nonentitlement to SIBS for the 12th quarter has not been appealed and therefore has become final and will not be addressed further. See Section 410.169.

Claimant indicates disagreement with the hearing officer's decision that the compensable injury did not include contracting Hepatitis C, stating that he strongly believes "that because of the transfusion [he] received during [his compensable] back surgery [he] contracted the infection." Claimant somewhat frames his appeal in terms of notice that he will appeal; however, we will consider it as a timely appeal and infer that claimant is requesting us to reverse the hearing officer's decision on that issue and render a decision in his favor. The respondent, referred to as carrier or self-insured as appropriate, responds, urging affirmance.

### DECISION

Affirmed.

It is undisputed that claimant was employed to assist handicapped children in one of the self-insured's schools and that he sustained a compensable low back injury on \_\_\_\_\_. Claimant's back injury eventually required surgery on January 31, 1995, during which claimant was given two units of blood. Claimant testified that at some later date, perhaps in 1998, he was diagnosed as having been infected with Hepatitis C. Claimant testified that he believes the Hepatitis C was transmitted to him through blood supplied by the blood bank during his 1995 surgery.

As the hearing officer notes, there is no medical evidence that claimant indeed has Hepatitis C, much less expert medical evidence of causation. Claimant relies on the statistical risk factor of exposure to blood, blood products, and bodily fluids to show that the only risk factors applicable to him is the 1995 blood transfusion. In evidence is an outline of a lecture on hepatitis given at a university health sciences school of nursing which lists risk factors for transmission of Hepatitis C as being 42% due to IV drug use, 40% "no known source," six percent history of blood transfusion, six percent heterosexual exposure, three percent household exposure, and two percent employment as a healthcare worker. Claimant contends that the only risk factor applicable to him was the blood transfusion and therefore the hearing officer should find the blood transfusion related to his compensable injury is the cause of his alleged Hepatitis C infection. Carrier points to an article entitled "Hepatitis C: The Silent Epidemic" (offered by claimant) which states that "[t]he risk for transfusion-related HCV [Hepatitis C] has dropped steadily from 20 percent in 1983 to

undetectable levels in 1995-1996. . . . Efforts to improve the safety of the blood supply (including better donor history screening and better HCV testing methods for donated blood) have likely contributed to this decline.” Also in evidence is an office note dated April 7, 1999, of Dr. G where he noted that claimant “told me that he has hepatitis C is [sic] has been diagnosed.” Dr. G reviewed claimant’s operative report where claimant “was given two units of blood.” Dr. G concluded: “He is under treatment for his hepatitis and this should continue.” Neither Dr. G nor any other doctor states claimant has Hepatitis C nor ventures a comment on causation.

The hearing officer, in his Statement of the Evidence, comments:

The evidence presented by the claimant failed to prove that his Hepatitis C, was contracted during his surgery. The evidence fails to establish that the claimant even has Hepatitis C. No expert testimony was presented when it was clearly required to prove causation. The claimant failed to prove by a preponderance of the evidence that his Hepatitis C, even if he has it, naturally flowed from his compensable injury.

The Appeals Panel has, from time to time, addressed the compensability of contraction of Hepatitis C, but, in the past, the alleged causative manner was from a needle stick or other manner of contraction in the course and scope of the employee’s work. In Texas Workers’ Compensation Commission Appeal No. 962057, decided November 21, 1996 (Unpublished), we noted the etiology and contracting of Hepatitis C involves knowledge beyond common experience, and medical evidence should be submitted which establishes the causation as a matter of reasonable medical probability as opposed to possibility, speculation, or guess. Texas Workers’ Compensation Commission Appeal No. 951553, decided October 31, 1995. See *also* Texas Workers’ Compensation Commission Appeal No. 951172, decided August 28, 1995. As previously noted, in this case, there was little proof claimant has Hepatitis C and less evidence of causation other than the six percent statistical probability that it came from a blood transfusion. We agree that the medical evidence here does not meet the necessary standard. From our review of the evidence in

this case, we find no basis to conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991. Accordingly, the decision and order are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge