

## APPEAL NO. 991543

This appeal arises pursuant to 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. The issues at the CCH involved whether the appellant/cross-respondent, who is the claimant, sustained cervical problems and psychological problems as a result of an injury sustained on \_\_\_\_\_; whether the respondent/cross-appellant (self-insured) waived the right to dispute those conditions; and whether the claimant had disability resulting from the injury and, if so, the periods of disability involved.

The hearing officer held that the claimant sustained two herniated cervical discs when he was hit in the side of the head, and that this blow lead to chronic headaches, but that he failed to prove that he sustained psychological injury or post-traumatic stress disorder. The hearing officer found that neither the chronic headaches nor the cervical problems prevented him from resuming his teaching duties after April 26, 1998. The hearing officer found that the period of time that the claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage (i.e., had disability) was limited to January 15, 1998, through April 26, 1998. He further found that the self-insured had timely disputed the additionally claimed injuries and had not waived the right to dispute them.

Both parties appeal. The claimant appeals the determination that he did not sustain emotional injuries. He also argues that the self-insured waived the right to dispute these injuries. The claimant argues some facts not brought out in the evidence concerning the extent of his duties as an agricultural teacher and his inability to perform those duties. He points out that he feels the employer for whom he worked for over 20 years has not dealt with him fairly. The self-insured responds that these appealed determinations are correct and should be affirmed. The self-insured appeals the finding by the hearing officer that the claimant sustained his herniated discs when struck in the head. The self-insured points out medical evidence indicating that these are degenerative in nature, and that no treatment was rendered for this condition until well after the injury in question. There is no response from the claimant to the self-insured's appeal.

## DECISION

We affirm.

The hearing officer's comprehensive summary of the evidence is hereby adopted into our decision. We will only briefly summarize.

The claimant had been an agricultural teacher for the employer. He said that on \_\_\_\_\_, as he was assisting another teacher in escorting two students who had been fighting, he was struck in the side of the head by one of them. The student in question was a 15- or 16-year- old female, approximately 150-160 pounds, and claimant said that he was

hit with her fist. The claimant said this started a continuing period of headaches and neck pain, culminating in his request for assault leave on January 15, 1998. He worked until then, but has not worked since. For most of 1998, claimant had been on paid leave status of one kind or another.

Claimant was on assault leave until April 26, 1998, at which point his leave status was changed due to medical documentation problems in establishing the assault as the causative factor for remaining off work. To greatly summarize the evidence, it was the claimant's contention that he was unable to work due to psychological problems and post-traumatic stress disorder, that this single blow caused him to have. Whether this would affect his ability to return to another type of job was not explored. He also asserted that his chronic headaches caused sleep disturbance. The claimant also testified that after the event in question, no one working for his employer seemed to care.

Claimant was treated for nearly a year by Dr. F for post concussion headaches. A note from his first visit to Dr. F on January 19, 1998, notes complaints of neck pain. The claimant had an MRI of the brain in February 1998 that was interpreted as normal except for sinusitis. Dr. F noted that claimant also had high blood pressure. When Dr. F left the workers' compensation system, he referred claimant to Dr. T, whom claimant saw beginning in February 1999. Dr. T testified by telephone at the CCH. He said that claimant had cervical herniations that might ultimately require surgery. He also had the impression of post-traumatic stress disorder, but conceded he did not have a firm diagnosis and this was not within his area of expertise. He laid responsibility for this on the fact that the self-insured denied approval for testing. Dr. T felt at the time of the CCH that it was primarily emotional problems, rather than any physical problems, that prevented the claimant from working. Dr. T said that his history of an accident came from the patient. It was brought out that Dr. T was under the impression in a March 1, 1999, report that the claimant has received "several" blows to his head in the course of an assault by a student. (However, later reports record a single blow.) Dr. T's reports set out how he believes the mechanism of injury (being hit in the side of the head) could have led to herniated cervical discs.

Mr. L, the employer's executive director for personnel matters and workers' compensation, stated that it was determined that claimant would be taken off assault leave because his doctor at the time, Dr. F, said that he could return to work a month after March 26, 1998, unless it was otherwise stated. Mr. L said that it was never otherwise stated, and that claimant had been repeatedly asked to furnish medical information about his status. He said that his investigation indicated that the student "slapped" claimant in the course of trying to get to the other student, and that the incident was not severe enough to account for the claimed magnitude of the injury. Upon questioning from the hearing officer, Mr. L said that he believed that the duties of an agricultural teacher would require some type of physical exertion when giving demonstrations (with animals or welding, for example), but otherwise would be more "mental" exertion.

The claimant contended he had reported neck pain from the very first to his doctors. He said that Dr. F told him that his concussion could cause neck pain. Claimant had a

cervical MRI on April 27, 1999, at the request of Dr. T that reported protruding discs at C3-4 and C5-6. Dr. T said that these could be causing the claimant's headaches. Peer review reports from a doctor for the self-insured dispute that claimant could have post-traumatic stress disorder from a single slap on the head from a student, or that the cervical discs could be causing headaches, in the absence of an impingement shown on MRI. It was also opined that the claimant's cervical discs were degenerative with no relationship to the injury. It should be noted that at the time of the injury, the claimant was 50 years old.

Although claimant contended he had limited range of motion to his neck, and a limit on abilities to lift, a surveillance videotape was presented by the self-insured showing the claimant participating for several hours in a benefit fish fry on June 5, 1999. Claimant is seen moving without any restriction, and rapidly moving his head in both directions, side to side, and up and down, during his cooking and talking with other volunteers. He is shown laughing and joking, with no apparent signs of psychological distress.

The carrier filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) disputing any psychological trauma or cervical injury in a March 9, 1999, notice. (While the hearing officer found that the self-insured had never received any written notice of post-traumatic stress disorder, clearly the self-insured had received notice when it filed its TWCC-21 that the claimant was contending a discrete psychological trauma; the precise diagnosis was not required to trigger a duty to react with investigation.) The TWCC-21 in evidence appears to be the self-insured's copy of an electronically filed form, although this was not brought out in the evidence; it recites that a certified copy was mailed to the claimant on March 9, 1999.

The first report indicating that claimant had anything separate and apart from periodic generalized depression or anxious feelings was on March 1, 1999, when Dr. T wrote a "To Whom It May Concern" letter setting out his belief that claimant may have post-traumatic stress disorder and noting a referral to a psychiatrist. On March 4, 1999, the self-insured was shown to have received the report of Dr. FO, whose independent evaluation on March 1, 1999, found that claimant had reached maximum medical improvement by that date, with a zero percent impairment rating and which report recorded impressions of post concussive disorder and cervical strain related to this. In any case, the claimant did not demonstrate that there was a report or other writing in existence prior to 60 days before the TWCC-21 was completed.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the

overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

On all appealed matters, there is sufficient evidence to support the assignment of credibility made by the hearing officer, who indicated that he did not find the evidence believable on the matter of an emotional or post-traumatic stress disorder from this incident, but did find credible the assertion that the cervical herniations were caused by a sideways blow to the head. Likewise, his determinations that the self-insured timely disputed, and did not waive its right to complain of compensability of the disputed extent of injury, are likewise supported. Finally, there is ample evidence to support the hearing officer's determination that any disability due to the injury ceased as of April 26, 1998. As we do not agree that the great weight and preponderance of the evidence compels a contrary result on any of these findings, we affirm the hearing officer's decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge