

APPEAL NO. 991569

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 25, 1999. With respect to the single issue before her, the hearing officer determined that the respondent's (claimant) high blood pressure, hypertension, and left frontal lobe hemorrhage are a result of the compensable injury sustained on _____. In its appeal, the appellant (carrier) argues that the claimant's evidence was insufficient to sustain his burden of proof within reasonable medical probability. In the alternative, the carrier contends that the claimant caused his own condition by not taking his pain medication and that any damage or harm resulting from the claimant's failure to comply with his doctor's instructions is not compensable. Finally, the carrier asserts error in the hearing officer's exclusion of one of its exhibits. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on _____. The claimant testified that he injured his low back lifting a case of candy. Dr. B is the claimant's treating doctor for his low back. On August 28, 1998, the claimant had a lumbar MRI, which revealed Grade I spondylolisthesis at L5-S1 along with a broad-based posterior disc protrusion and left posterolateral focal herniation. Dr. B recommended spinal surgery. Dr. N, the carrier's spinal surgery second opinion doctor, concurred in the need for surgery in a report of December 10, 1998.

On December 31, 1998, the claimant was admitted to the hospital with complaints of a severe headache. The claimant testified that he developed the headache about 10 days prior to his admission to the hospital. At the hospital, the claimant was treated by Dr. P, a neurologist. In a consultation report, Dr. P noted that a CT scan of the claimant's head had shown a left frontal hemorrhage; that surgery was planned for lumbar disc problems; that the claimant has been "cutting back" on his medication "secondary to friends and family talking to him about him taking too much"; and that there was a "questionable history of hypertension" in that he had previously taken Corgard to control his blood pressure but had not been taking anything recently. Dr. P's impression was hypertensive hemorrhage of the left frontal lobe and "hypertension secondary to back pain and not taking any pain medications." In a "To Whom it May Concern" letter of January 27, 1999, Dr. P stated:

It [is] my understanding [claimant's] medical benefits have been denied as "non-compensable" for the emergency room and hospital admission of December 31, 1998. This patient developed hypertension which was secondary to his severe muscle spasms and back pain. This is not unusual and happens quite frequently. However, [claimant's] condition became much more severe than most. He suffered from a left frontal lobe hemorrhagic

infarct secondary to hypertension which was directly related to the back injury.

In a letter of March 17, 1999, Dr. B stated:

[Claimant] has been seeing me since July 1998. He has chronic severe back pain due to spondylolisthesis. Surgery was proposed by September 1998 in the form of lumbar laminectomy and fusion. While he was awaiting surgery, he suffered a cerebral hemorrhage caused by hypertension, I believe, which in turn has been the opinion of [Dr. P], his treating neurologist, aggravated by anxiety and pain from his back in her opinion, and I concur the stroke was caused by his pain.

In a letter of May 28, 1999, Dr. B stated "[r]egarding [claimant's] cerebral hemorrhage and its relationship to the Workers' Compensation injury of _____, I have to rely upon the opinion of [Dr. P], the neurologist, who finds that the two are causally related."

The carrier introduced a consultation report from a Dr. RL, who purportedly consulted with the claimant in the hospital on December 31, 1998, upon referral from Dr. P. However, the claimant testified that the psychiatrist who consulted with him in the hospital was Dr. LR and not Dr. RL. Dr. RL's report states that the claimant was "extremely anxious and very easily angered" and that he "has been having trouble with his temper for many years." Dr. RL concluded that the "patient sounds like he has an intermittent explosive disorder."

The carrier had Dr. HB, a neurosurgeon at the (college), perform a records review and provide an opinion on the causal connection between the claimant's compensable injury and the intracerebral hemorrhage. In a report of January 25, 1999, Dr. HB stated:

It is extremely unlikely that chronic pain caused the elevation in blood pressure and hemorrhage. Much more likely is that supported in the record; namely that this is an individual with a diagnosis of Intermittent Explosive disorder during which elevations of blood pressure producing intracerebral hemorrhage are infinitely more likely. Cardiovascular events associated with excitement, and especially rage, are well documented in the literature. In over 3000 patients with chronic pain in the [college] Pain Clinic we have never recorded a case of episodic hypertension and intracerebral hemorrhage as a consequence of ongoing chronic pain. We frequently did monitoring of heart rate and blood pressure during treadmill exercise in patients with ongoing low back pain without such an event.

The hearing officer determined that the claimant sustained his burden of proving the causal connection between his compensable injury and the hypertension and left frontal lobe hemorrhage. That question presented a question of fact for the hearing officer to resolve. However, because the causal connection between a back injury, hypertension and a left frontal lobe hemorrhage 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 this case, there was conflicting evidence on the question of whether the hypertension and left frontal lobe hemorrhage were caused by the compensable injury. Dr. P opined that the claimant's back pain and spasms caused him to develop hypertension and that the left frontal lobe hemorrhage was secondary to the hypertension related to the back pain and spasms. However, Dr. HB opined that it was "extremely unlikely that chronic pain caused the elevation in blood pressure and hemorrhage." The hearing officer resolved that conflict by accepting Dr. P's opinion, concurred in by Dr. B, over that of Dr. HB and determined that the claimant had sustained his burden of proving a causal connection between his compensable injury and the hypertension and left frontal lobe hemorrhage. She was acting within her province as the fact finder in so doing. Our review of the record does not reveal that the hearing officer's extent-of-injury determination 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). Although another fact finder could have drawn different inferences from the evidence in the record, which would have supported a different result, that does not provide a basis for us to disturb the hearing officer's decision. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The carrier argues that the claimant's hypertension and left frontal lobe hemorrhage were caused by his failure to follow his doctor's instructions concerning the taking of his pain medication and further contends that "damage or harm that results from the failure of the claimant to comply with his doctor's instructions is not included within the scope of the original compensable injury." The carrier did not make this argument to the hearing officer and we will not consider it for the first time on appeal.

The carrier also asserts that the hearing officer erred in excluding Carrier's Exhibit No. 11, a supplemental report from Dr. HB dated May 29, 1999. The claimant objected to the report because it had not been timely exchanged. The carrier asserted that it exchanged the report with the claimant on June 1, 1999, just two days after it was written. In excluding the report, the hearing officer noted that the carrier did not use due diligence in obtaining a supplemental report from Dr. HB, the doctor it had hired to provide a causation opinion in this instance. We review evidentiary rulings under an abuse of discretion standard. We cannot agree that the hearing officer abused her discretion in finding that the carrier had failed to establish good cause for its failure to timely exchange Dr. HB's supplemental report based upon what the hearing officer determined was an unreasonable delay in seeking additional information from a doctor it had retained. The hearing officer properly considered the carrier's diligence, or lack thereof, in making her evidentiary ruling, and we perceive no error in her decision to exclude Carrier's Exhibit No. 11.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge