APPEAL NO. 991597

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On June 24, 1999, a contested case hearing (CCH) was held. The issues disputed at the CCH were whether the respondent, who is the claimant, sustained an injury to her rib cage and a psychological impairment in the course and scope of her employment; the correct impairment rating (IR) to be assigned to her; and whether she was entitled to supplemental income benefits (SIBS) for the first and second quarters of eligibility.

The hearing officer held that the claimant's psychological and personality disorders were part of her compensable injury and that they were permanent. He further held that her fall caused an inflammation or displacement of the cartilage in her rib cage. The hearing officer gave presumptive weight to the amended report of the designated doctor, which took into account her psychological impairment, and found that her IR was 18% and that the great weight of other medical evidence was not contrary to this report. Finally, the hearing officer ascertained that the claimant was not entitled to her first two quarters of SIBS because she failed to make a good faith search for employment commensurate with her ability to work.

The appellant (self-insured) has appealed, arguing that there was no indication that the claimant sustained a permanent psychological condition that was entitled to an IR. The self-insured further argues that the claimant did not sustain injury to her rib cage as there was no contusion to those areas. After the filing date for an appeal, the self-insured filed a supplement with a document purporting to indicate that the claimant's psychological condition was in fact preexisting. The claimant responds by objecting to the supplemental report and then by noting that the other matters are within the hearing officer's duties as trier of fact and should not be set aside. There is no appeal of the determination that the claimant was not entitled to SIBS.

DECISION

We find sufficient evidence to support the decision of the hearing officer on the appealed points.

On _____, the claimant fell on some stairs and landed hard, doing the "splits." She sustained undisputed injuries to her left leg, left knee, and lumbar spine. The claimant's age at the time was in her middle 40s. The claimant said that she twisted as she fell, which caused a separation of cartilage in her rib cage area. Rib cage and chest pain is documented in her early medical records. The claimant, to make a long story short, has been treated for chronic pain and said that she has developed reflex sympathetic dystrophy. This diagnosis is supported by reports of Dr. P, a treating doctor.

Ancillary to the claimant's chronic pain, she received treatment by psychiatrists and psychologists for depression and suicidal iterations. There is medical evidence tying this

directly to her injury. A doctor for the self-insured who had not examined the claimant, Dr. G, Ph.D., was called as a witness not to dispute the causal connection but to question whether such depression could be permanent. He did agree that her medical records indicated that her depression was worsening. Dr. G said that the claimant's indicators of subjective exaggeration on psychological testing were considerably higher than average.

Due to controversy over the claimant's IR, she was examined by Dr. E, a designated doctor. He noted in passing that she had received psychological counseling and medication, but evaluated her left knee, mid back, and lower back injuries. He determined that she had a 14% IR and had reached maximum medical improvement (MMI) on September 1, 1997 (which appears to correlate to the statutory MMI date). In January 1998, Dr. E was asked by the Texas Workers' Compensation Commission (Commission) to consider additional evidence relating to a rib cage injury, as well as Dr. P's specific disputes with his computations of knee and lumbar IR, but Dr. E said that these points did not change his IR. It appears that not until December 2, 1998, did the Commission ask Dr. E to consider (after a benefit review conference) the additional information relating to the claimant's depression and psychological condition. Dr. E responded that based upon the information, he agreed that the claimant qualified for rating under the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and assessed an additional five percent IR for emotional disturbance, for a total of 18%.

It is worth noting that the claimant was able to perform regularly as a parent volunteer for scoring volleyball games at the school and ran for public office from March to May 1999. However, in April 1999, Dr. P recommended in-patient admission to a psychiatric hospital. This was done on April 16th, where the claimant was treated by Dr. ES, a psychiatrist. Dr. ES's evaluation diagnosed major depression with homicidal and suicidal features.

Dr. P referred the claimant to Dr. FK, Ph.D., whose diagnosis is recited in the hearing officer's findings of fact. Dr. FK found that the claimant's somatization profiles were average for pain patients. She found that the claimant had inadequate coping skills for what she was undergoing. The claimant attended four sessions with Dr. FK, but at the time of the CCH was undergoing treatment with a licensed professional counselor, Ms. Z, on referral from Dr. P. Ms. Z's records concur in the severe aspects of the claimant's emotional disturbances. (We note that the additional evidence presented by the self-insured in its belated supplemental appeal is from Ms. Z.)

At the outset, we will not consider the belatedly submitted report from Ms. Z nor remand the case based upon this. The self-insured has been free all along to explore with the claimant's series of therapists the extent to which any psychological conditions that have developed from the injury had their genesis in factors in the claimant's past. Moreover, the report, indicating a desire of the therapist to look into a past trauma in the claimant's young adulthood for insight into her current coping mechanisms, does not stand

for the proposition that the claimant had a preexisting emotional illness, nor would the report, if considered, compel a different decision on the part of the hearing officer.

In reviewing the evidence, we cannot agree that the hearing officer's findings of the extent of the claimant's injury to a rib cage or psychological injury do not have sufficient support in the evidence. Although the self-insured emphasizes that the claimant did not strike her rib cage, she did not assert that she did; rather, she explained how the twisting in the course of falling caused this injury. There is support in the medical reports for this, as there is for the existence of pain-related depression. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, 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.). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.- El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

A major controversy appears to be whether the claimant's psychological condition is rateable under the AMA Guides, and whether the amended report of Dr. E should have been given presumptive weight. We have held that a designated doctor may be asked to revise his report to take into account the full scope of an injury where it is apparent that only part of a compensable injury was considered. *See* Texas Workers' Compensation Commission Appeal No. 981613, decided August 28, 1998. And we have held that a designated doctor may amend his report of IR or MMI for a proper purpose and within a reasonable amount of time. Texas Workers' Compensation Commission Appeal No. 92441, decided October 8, 1992; Texas Workers' Compensation Commission Appeal No. 941518, decided December 29, 1994. Where an amendment is not done for a proper reason or within a reasonable time, the adoption of a subsequent report of a designated doctor has been reversed and the earlier report given presumptive weight. Texas Workers' Compensation Commission Appeal No. 960274, decided March 28, 1996. Whether an amendment is done within a reasonable period of time is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 960888, decided June 18, 1996.

The better practice would be, as was not done here, for the hearing officer to make findings as to whether the amendment was done for a proper purpose. The hearing officer did make a conclusion of law, however, that presumptive weight should be accorded to the "reports" of the designated doctor, which implies a finding that the first report was properly amended to take into account the full extent of the injury to include the psychological injury;

the hearing officer made implied findings that the first report was incomplete and that the amendment was done for a proper purpose.

We therefore affirm the hearing officer's decision and order as to the appealed issues.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Alan C. Ernst
Appeals Judge