APPEAL NO. 991666

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 July 19, 1999. The issue at the CCH involved whether the appellant, who is the claimant, sustained a permanent psychological condition as part of his compensable injury of (Injury 2).

The hearing officer held that the claimant's psychological problem did not occur because of a specific event on Injury 2, and did not naturally flow from his compensable injury.

The claimant has appealed. He argues that if medical treatment has been provided for his depression, then it necessarily had to be part of the compensable injury. He argues that his condition is permanent whether or not it is also treatable. The respondent (carrier) responds that claimant failed to present evidence that his condition is permanent, and that the claimant had, according to the medical evidence, a preexisting mental condition. The carrier further argues that the claimant's condition stemmed from worrying about his job, and not from his injury.

DECISION

We affirm.

The claimant worked for (employer). The health and safety manager for the employer, Ms. M testified that the claimant had five previous back injury claims during the course of his employment with the employer. Ms. M recalled that after a forklift injury in (injury 1), he lost eight months of work. Claimant testified that he also sustained a back injury on February 7, 1994, when a dumpster door fell on his back. He recounted other injuries in 1989. He agreed that he had lost time from work due to depression in 1990, 1992, and 1995. The claimant contended his depression escalated after his injury 2 injury. He said he resigned because of what the job had done to him, and said his acceptance of a severance package was "pressured."

The claimant said that he continued in chronic pain which began to affect him psychologically, at home, and in his ability to get another job. At this point, he began treatment with Dr. G, a psychologist. The claimant said he applied for and received social security benefits for chronic pain and psychological disability. The claimant said he was 51 at the time of the CCH. Dr. G opined that claimant's depression was, in part, related to his injury 2 injury. Dr. G noted on May 21, 1998, that the claimant had moderate to severe depression, and mild to moderate anxiety. Dr. G diagnosed a pain disorder with psychological and medical factors.

Claimant said he had treated previously with Dr. S and Dr. A, who were psychiatrists, for depression. There was evidence that he had been diagnosed in February

1990 with chronic depression, following a terrible family tragedy. He had taken medication, including Haldol. His current medication, prescribed in 1998, was Respinol, which he said was better. The claimant agreed that concerns about the financial future of his family after he left the employer contributed to his depressed status.

At the time of claimant's claimed injury on Injury 2, Ms. M said he had already accepted a voluntary severance package that the employer was offering ancillary to selling off a portion of its business. Ms. M said that after this, he contended he was injured by going up and down stairs, which bothered his back. The claimant testified and concurred that his back injury arose out of running up and down steep steps, and he did not precisely answer when asked whether he believed this was repetitive or from a single incident.

Medical records of Dr. Z, going back to 1989, document that claimant had treatment and medication for psychological problems in 1989-90 and for this current injury. Records from Dr. Z for the current injury refer to treatment by the county mental health society "for years"; however, there are no records between 1990 and 1995 documenting psychological treatment. On March 29, 1995, Dr. Z opined that the back problems appeared to be a flare-up of the previous injury 1 back injury rather than a new injury, but later, on March 26, 1996, said that the symptoms appeared indicative of a new injury. This report was incomplete, as noted at the bottom of the last paragraph.

The claimant had received a six percent impairment rating (IR) after his injury 1 injury. Claimant was assessed with four IRs for the injury 2 injury. Treating doctor Dr. B certified a 10% IR on September 23, 1997. This was assessed only for the back, although Dr. B observed that claimant had emotional problems ancillary to the back injury. Another, from Dr. F, referred to in other records, was five percent. Dr. O, a doctor for the carrier, assessed six percent, related to lateral lumbar range of motion deficits that were not invalidated; his report was dated February 5, 1997. The carrier posed questions to Dr. O about claimant's psychological condition, and Dr. O responded on June 23, 1999, that he saw no evidence of a permanent psychological injury. He said results of a "Back Depression" test and retest were normal. Dr. O quoted from the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. Finally, Dr. K, who indicated he was a designated doctor, assessed a three percent IR on June 6, 1997.

Finally, we note that January 5, 1996, EMG testing was abnormal for the left leg. The tester concluded that polyradiculopathy rather than polyneuropathy was suggested, but that a relatively normal MRI and reflexes would lean more toward the latter.

The relationship of the way the issue is phrased, income to benefits, is not readily apparent. It appears to us that the concern with whether the claimant's psychological condition is a "permanent" part of his injury may have to do with the IR. At the outset, we address the claimant's contention that any conditions for which medical benefits are provided must necessarily be part of the compensable injury.

Section 408.021(a) provides that an employee is specifically entitled to health care required by the nature of the injury, that cures or relieves its effects, promotes recovery, or enhances the ability of the employee to return to work. The circumstances that surround a physical injury may, particularly in one predisposed to react to adverse stimuli with a sense of hopelessness, generate a certain amount of depression. The emotional status of a person may very well determine how well the course of treatment for the physical injury progresses. Consequently, providing counseling and/or medication is an indirect way to accomplish the health care goals in Section 408.021(a) that treatment only for the injury may not work as successfully or as quickly. We cannot therefore agree with the claimant's argument that the carrier necessarily regarded the claimant's depression as part of his injury because it provided a certain amount of treatment. The fact that a person with a psychological disease reacts to various adverse stimuli, such as an injury, with depression, does not necessarily constitute an "aggravation" of that psychological condition but may in fact entitle the worker to treatment of that episode of depression. *See* Texas Employers Insurance Association v. Wilson, 522 S.W.2d 192 (Tex. 1975). The reasonableness and necessity of extended treatment of a psychological episodic reaction is one for determination by the Medical Review Division.

As noted in Texas Workers' Compensation Commission Appeal No. 941729, decided February 10, 1995, the purpose of an IR is to assess "any anatomic or functional abnormality or loss existing after maximum medical improvement that results from a compensable injury and is reasonably presumed to be permanent." Section 401.011(23). It is not an "injury" that is rated by the residual, and permanent, effects of that injury. There is no anatomical (brain syndrome) loss claimed in this case, and it appears, as noted by Dr. O, that any functional loss is treatable, and has been treated when manifested in the past. While we would not necessarily endorse the hearing officer's observation in his discussion that a psychological condition would be an "ordinary disease of life," his observations that the claimant's psychological condition was not caused by or naturally flowed from the 1995 injury, or that it was not "permanent," (the sole issue he was asked to decide) are supported by the record.

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.). He could choose to believe that the producing cause of claimant's depression was both an ongoing condition coupled with the fact of early retirement.

We do not agree that the great weight and preponderance of the evidence compels a contrary result, and accordingly we affirm the hearing officer's decision and order.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Alan C. Ernst
Appeals Judge

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Elaine M. Chaney
Appeals Judge