APPEAL NO. 991885

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 August 13, 1999. The issues at the CCH were whether the appellant/cross-respondent's (claimant) injury to his left eye was a producing cause of his current medical condition of diabetic proliferative retinopathy and vitreous hemorrhage requiring laser photo coagulation treatment, and whether the claimant's diabetic proliferative retinopathy was the sole cause of his disability since October 14, 1998. The hearing officer determined that the compensable injury to the left eye is a producing cause of the medical condition of vitreous hemorrhage in his left eye requiring laser photo coagulation treatment but that the compensable injury is not a producing cause of the medical condition of the claimant's right eye nor his current medical condition of diabetic proliferative retinopathy. He further determined that the diabetic proliferative retinopathy is the sole cause of the claimant's inability to work since October 14, 1998, and that he does not have disability after that date. Claimant appeals, disagreeing with several findings of fact and conclusions of law, urging that any determination regarding his right eye should not have been made since it was the left eye that was in issue, and urging that his disability is caused by both vitreous hemorrhage and diabetic proliferative retinopathy. Respondent/cross-appellant (carrier) urges error (basically clerical-type error) in several findings of fact, appeals the determination that the compensable injury to the left eye is the producing cause of the vitreous hemorrhage in the left eye as being against the great weight of the evidence, and responds that there is sufficient evidence to support the determinations appealed by the claimant.

DECISION

Affirmed as corrected and modified.

The Decision and Order of the hearing officer sets forth adequately and fairly the pertinent evidence in this case and it will only be briefly outlined here. Succinctly, the claimant, with an eight-year history of diabetes milletus, was clearing some ice from a freezer on _____, when he was hit in the face by some falling particles of ice. Although there are conflicting versions of where he was hit, at the CCH he testified that it hit him on the top of the nose between the right and left eye which caused some bleeding. He stated he reported both eyes and that he had blurry vision. The parties stipulated that the claimant sustained a nonspecific compensable injury to the left eye. The claimant first saw a doctor on June 23rd and was referred to an ophthalmologist. Both diagnosed blurry vision in the left eye from a vitreous hemorrhage in the left eye and noted preexisting diabetes milletus. The claimant was referred to Dr. S, who stated that the vitreous hemorrhage was provoked by the trauma. In his opinion, the vitreous hemorrhage was work related but not the diabetic proliferative retinopathy, and the treatment plan was photo coagulation laser treatment of the "left eye first, then right eye." Records from Dr. S's office indicate that the claimant was notified that while the left eye hemorrhage was possibly provoked by the trauma of the falling ice, the scheduled laser surgery was needed because

of the diabetic condition and would not be considered workers' compensation related. The claimant underwent laser surgery treatment under the auspices of the Texas Commission for the Blind.

The claimant started seeing Dr. B in September 1998, who states in a letter that he found both old and new hemorrhage in the left eye and that the trauma that occurred could have caused the new hemorrhage but the old hemorrhage would indicate that the problems in the eye from diabetes had been going on for sometime. Both Dr. S and Dr. B diagnosed proliferative diabetic retinopathy which had been going on for sometime and stated that the trauma of the ice hitting the claimant exacerbated the vitreous hemorrhage on _____. The medical evidence did not show that the preexisting diabetic proliferative retinopathy was caused by any traumatic incident.

Initially, we deal with the errors of a clerical nature in the findings of the hearing officer. In Finding of Fact No. 6, the hearing officer makes findings that the claimant was hit in the left eye and was not hit in the right eye but goes on to find that the ice hitting him in his eye resulted in a vitreous hemorrhage in the right eyeball. It is apparent that this was a clerical-type error, as all the evidence and other findings and conclusion relate to a left eye injury of vitreous hemorrhage and only a noncompensable condition of diabetic proliferative retinopathy relating to the right eye as well as the left. We thus correct this obvious error and modify the final sentence of Finding of Fact No. 6 to reflect left eye in place of right eye. In both Findings of Fact Nos. 9 and 10, the hearing officer refers to a date of October 7, 1999, and October 8, 1999, respectively and these are again obvious clerical errors and should reflect the year 1998, and are hereby corrected to reflect the year 1998.

Regarding the issue of whether disability extended beyond October 14, 1998, as stated, the hearing officer determined that the claimant's diabetic proliferative retinopathy was the sole cause of his inability to obtain and retain employment at his preinjury wage since October 14, 1998. Clearly, there is evidence to support this determination although there is some evidence from which it could be inferred that the vitreous hemorrhage may also be a factor in his work capability after October 14, 1998. This was a factual issue for the hearing officer to resolve from the evidence before him, particularly the expert medical opinions and records introduced. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We have reviewed the evidence of record and cannot conclude that his findings, conclusions, and decision on this issue were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Similarly, with regard to the issue as to whether the vitreous hemorrhage in the left eye was causally related to the incident of _____, there was some conflict in the evidence which had to be resolved, a matter for the hearing officer. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); Section 410.165(a). Given the claimant's testimony, the onset of blurred vision shortly following the incident, and the medical evidence that could be viewed as

giving rise to an inference that the trauma of the ice hitting the claimant provoked the vitreous hemorrhage in the left eye, we conclude there was a sufficient evidentiary basis to support the hearing officer's finding, conclusion, and decision on this issue. Lopez v. Hernandez, 595 S.W.2d 180, 183 (Tex. Civ. App.-Corpus Christi 1980, no writ). We do not substitute our judgment for that of the fact finding hearing officer where supported by sufficient evidence. Texas Workers' Compensation Commission Appeal No. 931148, decided February 1, 1994.

Accordingly, with the modifications set out above, the decision and order are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge