

APPEAL NO. 992053

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 September 1, 1999. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) impotence is not a result of or related to his compensable injury of \_\_\_\_\_. In his appeal, the claimant argues that that determination is against the great weight of the evidence. In addition, the claimant contends that the "wrong standard of proof was used" in that the hearing officer "wrongfully burdens [claimant] with the responsibility of ruling out (disproving) all other possible causes." In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on \_\_\_\_\_. On January 20, 1992, the claimant underwent a laminectomy and discectomy at L5-S1. Post-operatively, the claimant developed a spinal fluid leak and was required to have a second spinal surgery on January 27, 1992. On February 7, 1995, the claimant had a third spinal surgery, a fusion at L5-S1, and on March 4, 1996, the claimant had a fourth spinal surgery to remove hardware from his spine. The claimant testified that he first noticed problems with impotence shortly after his January 1992 surgeries and that it has gotten progressively worse. He stated that he is 32 years old and that he did not have any problems with impotence prior to his compensable injury. The first reference to the difficulty maintaining an erection in the claimant's medical records is an October 20, 1997, report from Dr. R, which states that he has had the problem for about two years.

The claimant introduced a December 22, 1998, letter from Dr. C addressing the causal connection between the claimant's compensable injury and the treatment required for that injury and his impotence. Dr. C's letter provides, in relevant part:

[Claimant] is a patient of ours in the East Texas area, who has undergone anterior lumbar interbody fusion at L5-S1 with continued mechanical lumbar spine pain. [Claimant], unfortunately, has developed a significant problem of impotence and requires treatment for this problem.

Impotence is a known complication of anterior lumbar fusion and can also be seen with other lumbar spine injuries and reconstructive surgery.

People with back injuries such as [claimant] who have undergone this sort of surgical correction do occasionally develop this sort of problem. It is well described within the medical literature.

[Claimant] does have an operated lumbar disc disruption, which can lead to the problem of impotence. Reasonable medical probability suggests that [claimant] would not have this problem with impotence if it were not for the injury of \_\_\_\_\_ and treatment required for the same.

The carrier had Dr. L, a urologist, review the claimant's medical records. In a letter dated December 14, 1997, Dr. L noted that it was not clear whether the claimant's impotence "was adequately evaluated." In a December 16, 1997, addendum to his report, Dr. L stated that "[w]ith respect to the erectile dysfunction, there is not sufficient documentation to indicate that the impotence is related to the injury."

The claimant had the burden to prove the extent of his compensable injury. Texas Workers' Compensation Commission Appeal No. 960733, decided May 24, 1996. In Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524, 526 (Tex. 1975), the court noted that the site of the trauma and its immediate effects are not necessarily determinative of the nature and extent of the compensable injury and that the full consequences of the original injury, together with the effects of its treatment, upon the general health and body of the worker are to be considered. The parties agreed that the cause of impotence is a matter outside common experience, thus, medical evidence of causation was required. There was conflicting evidence on the causation issue. Dr. C opined that the claimant's injury and the treatment he received for that injury caused his impotence, while Dr. L opined that there was insufficient evidence to establish the causal connection between the injury and/or the effect of treatment and the claimant's impotence. In this instance, it is apparent that the hearing officer simply was not persuaded by Dr. C's opinion. As the sole judge of the weight and credibility of the evidence under Section 410.165, it was the hearing officer's responsibility to resolve the conflicts in the evidence and to determine what facts had been established. He was acting within his province as the fact finder in deciding to reject Dr. C's opinion. Our review of the record does not demonstrate that the hearing officer's decision that the claimant's impotence is not a result of or related to his compensable injury is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, 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).

The claimant argues that the hearing officer applied an incorrect standard of proof and that he required the claimant to disprove all potential causes of his impotence. The claimant cites Finding of Fact No. 3, which states "Claimant's erectile dysfunction may be the result of a number of causes, physical and psychological," as evidence that the hearing officer applied an incorrect standard. We find no merit in that assertion. Finding of Fact No. 4 states:

Claimant failed to prove by a preponderance of the credible medical evidence that his impotence is, in reasonable medical probability, a result of his

compensable injury and/or treatment for the compensable injury. (Emphasis added.)

In Finding of Fact No. 4, the hearing officer properly identified that the claimant had the burden to prove the causal connection in this case by a preponderance of the evidence. In the face of such a plain statement identifying the claimant's burden, we find no basis for determining that the hearing officer held the claimant to a higher standard of proof. We perceive no error.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Alan C. Ernst  
Appeals Judge