APPEAL NO. 000068

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 December 3, 1999. The hearing officer determined that the appellant's (claimant) compensable injury of _____, was not a producing cause of his high blood pressure, diabetes, and right hip condition. The claimant appeals these determinations, expressing his disagreement with them and contending that the hearing officer "did not properly consider" his evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The carrier accepted liability for a left hip injury sustained on _____, when the claimant was struck on the left hip and back by tires thrown from a truck. He eventually underwent a total left hip replacement. He has also been diagnosed with high blood pressure, diabetes, and avascular necrosis (AVN) of the right hip. It was his position that the pain and inactivity caused by his left hip injury caused him to gain weight, which in turn caused the high blood pressure and diabetes. The claimant also asserts that the left hip injury caused him to shift his weight to his right hip resulting in right AVN. He admitted to a family history of diabetes, that he smoked and consumed some alcoholic beverages on a social basis, but nothing near the 12 beers per day reflected in one of the medical reports. He said he gained approximately 70 pounds, some of which has been lost.

Section 401.011(26) defines injury as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Included in the definition of injury is an occupational disease, but not an ordinary disease of life, which is a disease "to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). The claimant had the burden of proving that his compensable injury was a producing cause of his high blood pressure, diabetes, and AVN. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Because causation in this case was not within common experience, the claimant was required to meet his burden of proof with expert evidence to a reasonable degree of medical probability. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.).

In a letter of July 24, 1999, Dr. W, the claimant's treating doctor, wrote that "[i]n all medical probability these things [high blood pressure, weight gain, and diabetes] became symptomatic directly as a result of the patient's clinical situation as the chronic pain problem developed as his anxiety developed with delayed or nontreatment and as his

decreased activity level secondary to pain resulted in increased weight gain." With regard to the right AVN, he wrote "[t]hough it is dubious to me that this condition would be defined as a work related injury in his right hip; it would offer a very reasonable or plausible explanation as to how he developed arthrosis in his left hip after the traumatic event of [_____] ." In a letter of April 19, 1999, Dr. W described the diabetes and high blood pressure as "borderline" and that the claimant's "forced inactivity would only naturally result in increased body weight." The claimant also testified that at his visit with Dr. W the day before the CCH, Dr. W told him that putting weight on his right hip to compensate for the injury to the left hip "wore it out."

Dr. H, who examined the claimant on April 7, 1998, in connection with the left hip injury, referred to a history from the claimant of smoking one-half to one pack and one-half of cigarettes a day, of drinking "periodically," and, until a year ago, of drinking a 12-pack of beer a day. The claimant denied consuming this much beer and had no idea where Dr. H obtained this information. He diagnosed left hip AVN, which he found "more related to the long-term consumption of 12 beers per day . . ." than to medication prescribed for the injury.

Dr. T reviewed the claimant's medical records at the request of the carrier and testified at the CCH. He considered the claimant's high blood pressure, diabetes, and AVN to be ordinary diseases of life. He agreed that trauma can cause high blood pressure and diabetes, but in these cases the effects are temporary. From his review of the records, he also concluded that the weight gain was temporary and he did not consider the claimant obese for his height. He also referred to the claimant's family history of diabetes as suggesting it was not caused by the compensable injury. With regard to the AVN, he observed that the records showed a significant collapse of the right femoral head, which he attributed to a history of smoking and alcohol use, not the shifting of weight from the directly injured left hip. Dr. C also reviewed the claimant's records and concluded that the weight gain, high blood pressure, and diabetes were not related to the compensable injury.

Whether the compensable injury was a cause of the high blood pressure, diabetes, and AVN were questions of fact for the hearing officer to decide. She considered the evidence in this case and found the opinions of Dr. T and Dr. C more credible and persuasive than the opinion of Dr. W. Accordingly, she found that the claimant failed to meet his burden of proving that the compensable injury was a producing cause of these diseases. The claimant appeals this determination, contending that the hearing officer did not properly consider his evidence. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In her role as fact finder, the hearing officer could accept or reject in whole or in part any of the evidence. Texas Workers' Compensation Commission Appeal No. 93819, decided October 28, 1993. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the opinions of Dr. T and Dr. C, deemed credible by the hearing officer, sufficient to

support her determination that the compensable injury was not a producing cause of the claimant's high blood pressure, diabetes, and AVN.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge