

APPEAL NO. 000088

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 28, 1999. The hearing officer determined that the compensable injury of the decedent was not a producing cause of the brain tumor which caused his death. Appellant (claimant) appeals this determination on sufficiency grounds. Respondent (carrier) responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends that the hearing officer erred in determining that the compensable injury of the decedent was not a producing cause of the brain tumor which caused his death. In his decision and order, the hearing officer set forth the background facts regarding the decedent's injury, the tumor, and the death benefits claim in this case. We will not repeat those facts in full in this decision. Briefly, the decedent sustained a compensable injury in a _____ motor vehicle accident (MVA). His injuries included a closed head injury and scalp lacerations. The evidence conflicted regarding whether the brain tumor was in existence at the time of the MVA. Regarding the cause of the tumor, there was medical evidence that this trauma was a cause of the tumor and also medical evidence to the contrary. Dr. H testified at the CCH and stated that he believed that the trauma from the MVA was a producing cause of the tumor. Dr. G testified that he did not think there was a causal relationship between the compensable injury and the tumor.

Claimant had the burden to prove by a preponderance of the evidence that the brain tumor was caused by the _____ compensable injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). This question of the cause of the tumor had to be proved by expert evidence to a reasonable medical probability. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 941583, decided January 9, 1995. Claimant was not required to prove that the compensable injury was the sole cause of the tumor, but only that it was a producing cause of the tumor that caused the decedent's death. See Texas Workers' Compensation Commission Appeal No. 962391, decided January 8, 1997. The use of "magic words" by an expert does not in itself establish causation, but the substance of the expert evidence, including the reasons given for the opinions expressed, must be considered in resolving the issue of causation. See Texas Workers' Compensation Commission Appeal No. 950455, decided May 9, 1995; Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992.

The hearing officer considered the evidence and concluded that the compensable injury was not a producing cause of the tumor. Causation was a question of fact for the

hearing officer to decide. Section 410.165(a) provides that the hearing officer, as fact finder, is the sole judge of the weight and credibility to be given the evidence. In the discharge of this responsibility, the hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this case, the evidence conflicted regarding causation. The hearing officer chose to credit the medical evidence that the compensable injury did not cause or lead to the tumor that caused the decedent's death. We have reviewed the record, the briefs on appeal, and the hearing officer's decision and order. We will not reverse the hearing officer's determination in this case because it is not so against the great weight and preponderance of the evidence as to be clearly erroneous and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge