

APPEAL NO. 000097

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 November 30, 1999. The hearing officer determined that the _____, compensable injury of the appellant (claimant) did not "extend to" "psychological problems, including depression, anxiety, post-traumatic stress disorder, and/or [post-concussional] syndrome." The hearing officer also determined that respondent self-insured ("carrier" herein) did not waive the right to contest the compensability of claimant's alleged psychological problems. Claimant appeals only the determination regarding extent of injury. 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 did not extend to "psychological problems, including depression, anxiety, post-traumatic stress disorder, and/or [post-concussional] syndrome." The parties stipulated that claimant sustained a compensable injury. Claimant testified that he was injured in a "head-on" motor vehicle accident (MVA) while working as a trooper for the (employer) on _____. Claimant, who was driving, was ejected from the rear window of the car but held into the car trunk by his seat belt shoulder strap. Claimant's passenger and the driver of the other car were killed in the accident. Claimant's x-ray and CT scan reports were normal and claimant was released from the hospital on March 26, 1997. Claimant testified that in addition to physical injuries including facial lacerations and a knee injury, the MVA caused him to suffer from memory problems and mood swings that his wife noticed. He said he saw Dr. R one time in April 1997 for counseling regarding the accident, but that he did not see him again. He said he saw Dr. B for counseling, but that Dr. B told him he was taking time away from "paying patients."

In an April 3, 1997, letter, Dr. R stated that he saw claimant in a counseling session because of his involvement in a critical incident and that "there were no indications that he could not return to his normal duty." A September 4, 1997, medical note from Dr. B appears to state that claimant is sleeping poorly and "staying upset" and that he had "suicidal thoughts after [the] accident but not continuing." A September 18, 1997, note states that public pressures continued, that claimant was fired, that he is taking it well, and that he is looking forward to making a new life for his family. Claimant said that the delay between his May 1997 visit with a counselor and his September 1997 visits was that his employer did not aid him in getting mental health treatment until his attorney became involved. In a 1998 letter, Dr. E said that claimant was involved in a serious MVA while working as a trooper; claimant and his family were subjected to intense public and media scrutiny and had been under pressure because of the MVA; claimant was terminated from his job; and that "as a result of these experiences, [claimant] has begun experiencing serious mood problems." Dr.

E referred claimant to his physician for antidepressant medication and recommended counseling. He noted that claimant said he felt isolated because of "community reaction to [the] event." Dr. E said there is a direct connection between the "current symptoms and the accident." In a 1999 report, Dr. T, a required medical examination doctor, stated that: (1) claimant initially showed signs and symptoms of post-traumatic stress disorder; (2) depression seems to have developed later and was exacerbated by adverse publicity and negative pressures at his workplace; (3) the depression seemed to reach a peak when his employment was terminated; (4) the termination seemed to contribute most to his current depression; and (5) claimant's mood was "mildly depressed." In a June 1999 report, Dr. H Ph. D noted that, after the MVA, claimant experienced "post-traumatic amnesia and confusion" at the scene. Dr. H also noted that claimant reported post-concussive symptoms and that this should be ruled out.

There was evidence that employer investigated the accident and it had determined that: (1) claimant was operating his patrol car without due regard for the safety of others; (2) claimant's intentional violation of the guest rider policy was a causative factor in the death of his passenger; (3) claimant had intentionally failed to file charges against his passenger resulting from her March 5, 1997, arrest; and (4) there was an inappropriate relationship between claimant and his passenger. After this investigation, claimant's employment had been terminated.

The hearing officer determined that: (1) claimant's personal problems and not the MVA caused his psychological problems, "if in fact he had any"; (2) the termination of claimant's employment was a legitimate personnel action; and (3) claimant did not show that he had psychological problems related to the compensable injury. The hearing officer noted that claimant had been experiencing marital problems prior to the MVA.

The 1989 Act 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." Section 401.011(26). The scope of an injury thus can encompass ancillary conditions which are connected to the injury. See Hood v. Texas Indemnity Insurance Co., 209 S.W.2d 345 (Tex. 1948); Texas Workers' Compensation Commission Appeal No. 92452, decided October 5, 1992. It is the claimant's burden to establish that the alleged psychological problems and disorders were caused by his compensable injury. The trier of fact judges the weight to be given expert medical testimony and resolves conflicts and inconsistencies in the testimony of expert medical witnesses. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

We have reviewed the record and evidence regarding claimant's mental condition and the compensable injury. To the extent that the evidence was conflicting, that was a matter for the hearing officer as fact finder to determine. Garza v. Commercial Insurance Company

of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We will not substitute our judgment for that of the hearing officer because his determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge