APPEAL NO. 000181

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 3, 2000, a contested case hearing was held. With respect to the only issue before her, the hearing officer determined that appellant's (claimant) compensable left leg laceration of _____, was not a producing cause of his current left leg condition (recurrent infections) after December 12, 1998.

Claimant appeals, giving certain explanations for incidents cited in the hearing officer's decision, asserting that the incidents consisted of "selective reading" and questioning what person would sabotage their own medical treatment. Claimant suggests that certain individuals be called to clear up any misunderstanding involving the cited incidents. Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent (carrier) responds, citing from the extensive medical records, to claimant's appeal and urges affirmance.

DECISION

Affirmed.

This is a highly unusual case and essentially involves the question of whether claimant was sabotaging his medical care by inducing repeated infections. It is undisputed that claimant sustained a compensable injury on _____, when he stepped into a hole and lacerated his left shin on a metal pipe. Claimant was apparently treated and the first medical record we find is an operative report dated November 18, 1995, which noted that the original wound "had a superficial closure which has become secondarily infected" and that claimant "is growing a multiple resistant streptococcus that is sensitive to Cipro and Bactrim." Claimant was diagnosed with having a nonhealing infected left leg wound. A January 1996 surgical note describes the removal of a metal foreign body from claimant's leg, which was compatible with a failure to heal.

In evidence are over 525 pages of medical records and reports offered by the carrier alone, plus probably 100 pages more by claimant. The hearing officer summarizes many of those reports and our recital will only cover some of the more instructive reports. By May 1996 the medical records indicate that claimant was noncompliant with his treatment. Various records show that grafted flaps had "failed secondary to patient noncompliance and ambulation on the leg, while in the hospital." A nurse's note dated May 31, 1996, references "[p]sych consult nurse note." Other nurse's notes reflect anger and noncompliance. The hearing officer recites "[u]pon a second surgical procedure . . . a metal nail head was removed from deep within Claimant's wound" (the January 1996 procedure). It is undisputed that claimant has had 25 to 30 surgical procedures performed on his leg for recurrent infections. Other instances were noted where, after a surgical procedure, claimant placed all his weight on his left leg; was observed using his fingers to gouge out his wound; disengaged the lockout mechanism to his narcotics pump and "over

bolused" himself with narcotics; refused to refrain from smoking; and a pack of matches was removed from the dressing of his leg.

In December 1998 claimant was referred to Dr. C, a psychiatrist, for evaluation. In a report dated December 12, 1998, Dr. C stated:

> [Claimant's] medical records indicate that he has been noncompliant with treatment. His leg injury has been noted in his records to be healing well on numerous occasions. However, [claimant's] intentional behavior has sabotaged his treatment and created new medical problems which are separate and apart from his original injury. Representative examples include:
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> (1) Continued smoking of cigarettes despite repeated encouragement and instructions to quit;
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> (2) Failure to immobilize his leg as instructed;
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> (3) Failure to use a crutch so as to be non-weight bearing on his left leg;
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> (4) Failure to perform instructed wound care;
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> (5) Refusing physical therapy;
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> (6) Failure to practice sterile technique as instructed;
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> (7) Failure to apply medication to the wound as instructed; and
>
> (8) Failure to take antibiotics as instructed, etc. . . .
>
> OPINIONS:
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> The Following are my opinions to a reasonable degree of medical probability:
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> (1) The current clinical condition of [claimant's] left leg was not caused by his initial injury on _____. His own intentional acts have prevented the healing of his wound on numerous occasions. . . but he has chosen to voluntarily sabotage his treatment and recovery. He has knowingly and intentionally caused his current condition and has perpetuated his role as a disabled patient.
>
> (2) The psychiatric diagnosis for [claimant] is Factitious Disorder with Predominately Physical Signs and Symptoms, DSM IV-R:300.19. This means that he is voluntarily producing physical injury to assume the sick role. There is also a significant probability that he is malingering as well with the external incentives being the acquisition

> of drugs and, possibly, a law suit against one of his treating physicians.

Other motivations consisting of assuming the victim's role, controlling others and indirect display of anger were mentioned. In September 1999 claimant was referred to Dr. L, a Texas Workers' Compensation Commission (Commission)-selected required medical examination doctor, and apparently a specialist in infectious diseases, for evaluation. In a report dated September 1, 1999, Dr. L diagnosed claimant as having "neurodermatitis with secondary infections" and commented:

> I do not believe that the infection he has had in his leg represents a recurrence of a previous process as there is nothing to suggest that. . . . I believe these are self-induced neurodermatitic lesions from the exterior which have become secondarily infected.

The Commission apparently requested clarification and Dr. L responded by letter dated September 28, 1999, saying:

> It is still my opinion that [claimant's] diagnosis is neurodermatitis and not persistent infection in his leg. Upon review of these records, it is apparent that, in May, he had an Enterobacter in his soft tissue; early in June, a Strep viridans and Staph aureus; and later in June, a Corynebacteria and Enterococcus. These are five separate organisms, and this culture history is not consistent with a persistent infection but rather with repeated new infections. Additionally, in March of 1998, he had a methicillin-resistant Staphylococcus aureus (MRSA) which is different than the Staph aureus that was reported in June of 1996.
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> Neurodermatitis is a self-induced disease that occurs because the patient scratches an initially healthy portion of tissue until there is an open sore. These open sores do have a tendency to get infected. There are basically two varieties of this disorder. The most common is when the itching occurs on the basis of anxiety and, less commonly, this is self-induced because the patient desires to produce a self-inflicted disease. You will have to ask the psychiatrist which form of neurodermatitis this represents.
>
> * * * *
>
> In summary, this patient has neurodermatitis at the present time and does not have a persistent infection due to a single (uniform) organism.

Claimant's treating doctor is Dr. A, who, in a report dated February 13, 1998, stated:

> Unfortunately, I could not state in truth that a new infection would be the result of a new incident or a continuation of his old injury. Obviously, that

would be obtained on historical grounds. However, in the absence of trauma or self-induced injury, I would suspect that his leg is more prone to developing recurrent infections than the opposite, uninjured leg.

Claimant contends that the infections are to his compensably injured left leg which has not healed properly. Claimant suggested that his problems may be due to all the different antibiotics he has been given in over four years and that the doctors are unable to state why infections develop in some people and not others.

Some of the hearing officer's disputed findings were:

FINDINGS OF FACT

4. On two occasions, Claimant has allowed his wound to become dehiscenced by placing his weight on the post-operated left leg.

5. Claimant has battered the surgical flip in his wound.

6. Claimant has been observed cleaning out his own wound with his finger and changing his dressing improperly without the application of prescribed cream.

* * * *

8. While at the ICU at [hospital] in April of 1998, staff nurses found a cup full of antibiotics that Claimant did not take.

9. Claimant's recurrent infections are five separate organisms which culture history is not consistent with a persistent infection, but rather with repeated new infections.

10. Presently, Claimant suffers from neurodermatitis, a self-induced disease.

11. Claimant has sabotaged the progress of his left leg wound by noncompliance of the medical care rendered causing recurrent left leg infections.

Claimant, in his appeal, gave explanations for those findings. Carrier, in its response, gave detailed references to reports and records which support the hearing officer's findings.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the

relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). 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). To this end, the hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). 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 decline to substitute our opinion for that of the hearing officer.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Judy L. Stephens
Appeals Judge