

APPEAL NO. 000236

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 January 10, 2000. The hearing officer determined that the respondent's (claimant) current psychological condition is related to his _____, compensable injury and that the claimant had disability from August 8, 1997, to October 19, 1997, and from October 26, 1997, to November 14, 1997. The appellant (carrier) appeals, urging that the hearing officer erred in determining that the claimant's current psychological condition is related to the _____, compensable injury. The appeals file contains no response from the claimant. The hearing officer's determination that the claimant had disability from August 8, 1997, to October 19, 1997, and from October 26, 1997, to November 14, 1997, has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant testified that on _____, while performing his job duties as a hotel manager, he asked someone to leave the hotel property and they attacked him. The assailant repeatedly hit the claimant in the face and head and the claimant said that he thought he was going to die. The claimant sustained injuries to his face, neck, head, shoulders, hands, and wrists and was taken by ambulance to the hospital. On August 19, 1997, Dr. S performed surgery to repair the claimant's orbital fracture. The claimant testified that his physical condition improved, but he began to experience feelings of anxiety and apprehension, especially when confronted by a large person. The claimant said that he contacted Dr. S, explained how he was feeling, and Dr. S referred him to Dr. H, a psychiatrist. On September 30, 1997, Dr. H examined the claimant and diagnosed post-traumatic stress disorder (PTSD) with panic attacks and major depressive disorder, single episode, in remission. Dr. H recommended individual therapy and released the claimant to return to work in an environment which kept him away from an assault setting. The claimant testified that he returned to work approximately October 20, 1997, through October 25, 1997, but was involved in a confrontation with a guest and experienced feelings of apprehension and fear. According to the claimant, he has remained off work since October 25, 1997, anticipating that the employer might offer him a desk job in a secure environment.

The claimant testified that he enjoyed his job and was not having any psychological problems prior to the injury. The claimant said that he had previously suffered depression, but had been off any medication and had not seen a psychiatrist for over two years prior to the injury. The medical records indicate that the claimant was a victim of sexual abuse by his father; that he sexually molested his daughter which led to the end of his marriage of 20 years; that his daughter attempted suicide as a result of his molestation; that his daughter's

attempted suicide caused him to become suicidal; that he was a patient at a psychiatric hospital for 45 days; and that after psychiatric hospitalization, he drank heavily for two and one-half months.

The claimant underwent a psychological evaluation by Dr. M, on February 27, 1998. Dr. M diagnosed the claimant with major depression, recurrent, and PTSD. Dr. M states, in part:

Clearly, his depression does preexist the injury, and is not caused by the injury. However, the emotional trauma of the assault has caused regression in his depression, and the addition of the problems with [PTSD] and associated panic symptoms. The latter are clearly injury related from a causal point of view. Further, it is clear that this will need to be addressed before he will be able to return to work. The depression also needs to be restabilized, so that it does not interfere with our efforts to get him back to work.

The Texas Workers' Compensation Commission (Commission) appointed Dr. S to perform a psychiatric evaluation. On April 7, 1999, Dr. S diagnosed the claimant with PTSD, chronic, with anxiety and depression, but not major depression. Dr. S states, in part:

This man had an acute stress disorder followed by a chronic PTSD. The chronic stress disorder is resolving, but not completely resolved. Clearly, when he was initially returned to work, his psychiatric problems had not been resolved and were merely exacerbated, and he had not reached Maximum Medical Benefit.

It is to be noted that he had a "period of wellness" from his psychiatric problems for two years prior to the injury. There is no question that he had certain personality factors extant from his childhood and development. This diagnosis was deferred at this evaluation.

The Commission asked Dr. S what current psychiatric/psychological conditions were caused by the _____, injury and Dr. S responded that the claimant has PTSD, chronic, which is not fully resolved and has continued difficulty from the "original trauma" (the assault on _____). According to Dr. S, the only current psychiatric/psychological condition not caused by the _____, injury are personality factors, such as some narcissism with passivity and occasional dependency conflicts.

The carrier presented the testimony of Dr. C, a psychiatrist, who reviewed the claimant's psychological test data and medical records. Dr. C testified that, in reasonable medical probability, the claimant had PTSD prior to _____, because he had been traumatized as a child by his father and that he was in "a remission of symptoms" prior to _____. According to Dr. C, the attack on _____, caused the PTSD that he

already had to become symptomatic for a period of time. The carrier also relied on the medical opinion of Dr. P, a psychologist, who reviewed the claimant's psychological test data and medical records. Dr. P noted that the claimant's MMPI data indicated gross exaggeration of symptom reporting, casting doubt on the validity of the claimant's claim of alleged psychological problems caused by the _____, assault incident. Dr. P states, in part:

Therefore, my opinion is that [the claimant] may have experienced an exacerbation of his pre-existing PTSD and depression problems subsequent to the _____ assault. These problems are psychologically/psychiatrically treatable, and [the claimant] has received adequate treatment for the exacerbation [sic] problems. Any current PTSD, depression, and/or other psychological problems are not likely related to the _____ incident. His inclination to over-report and exaggerate psychopathology is likely a reflection of his personality makeup.

The issue was phrased in terms of whether the claimant's current psychological condition is related to the _____, compensable injury, and the hearing officer determined that the claimant's current psychological condition is related to the _____, compensable injury. The issue could have been phrased as whether the claimant's PTSD and depression are related to the _____, compensable injury; whether the claimant's preexisting PTSD/depression was aggravated by the assault on _____; or whether the claimant's _____, injury was a producing cause of the claimant's PTSD/depression. We discourage use of the term "current condition" because it is unclear what specific condition is being litigated and encourage extent-of-injury issues to refer to a specific condition or diagnosis. The carrier argues on appeal that the hearing officer failed to make appropriate findings regarding the nature of the claimant's condition and whether it was aggravated. We find the claimant's findings sufficient to address the issue as framed.

According to the carrier, the claimant's current psychological condition is not related to the _____, injury but to the claimant's problems which predated _____. The carrier argues that the claimant has failed to meet the legal standard set forth in Texas Workers' Compensation Commission Appeal No. 951754, decided December 8, 1995. In Appeal No. 951754, the Appeals Panel stated that aggravation of a preexisting psychological condition must be proven by a reasonable medical probability and the claimed compensable psychological injury must not be merely a recurrence of symptoms inherent in the etiology of an underlying condition that has not completely resolved, but that there has been some enhancement, acceleration, or worsening of the underlying condition from an injury. The claimant had the burden to prove that he sustained an aggravation of a preexisting condition on _____. He did not have to prove that he continued to experience an aggravation for the condition to be determined compensable.

The carrier argued that the claimant had preexisting PTSD; that the assault on _____, caused it to become symptomatic; that the claimant received treatment from Dr. H which was paid for by the carrier; and that the claimant's PTSD resolved. The issue of whether a compensable condition or injury has "ended" or "resolved" is a question involving the need for medical treatment and is an issue for the Commission's Medical Review Division. The carrier may obtain resolution of the issue of compensability of the injury through the Commission's Hearings Division. Once the injury is found to be compensable, the issue of what treatment is reasonable and necessary for the compensable injury, if any, is a question that should be addressed in the Medical Review Division.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

The hearing officer found that the claimant's current psychological condition is related to the _____, compensable injury, based upon the report of Dr. S and the testimony of Dr. C. Drs. S and C indicate that the claimant's PTSD and depression are related to the attack on _____, and that the claimant has suffered more than a recurrence of symptoms. While Drs. S and C do not specifically state that the claimant's condition was enhanced, accelerated, or worsened, they state that the claimant suffered an "acute stress disorder" and his condition was "exacerbated" and "became symptomatic." All of the medical opinions support that claimant suffered an aggravation of a preexisting condition when he was attacked on _____. The hearing officer weighed the medical evidence and concluded that the claimant's current psychological condition is related to his _____, compensable injury. Having reviewed the record, we conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge