

APPEAL NO. 000405

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 January 12, 2000. The issues at the CCH were whether: (1) the compensable injury of _____, is a producing cause of the neck and low back problems of the appellant/cross-respondent (claimant); (2) the respondent/cross-appellant (carrier) adequately contested causation regarding the current condition; (3) there was an election of remedies; (4) claimant filed a claim within one year; and (5) claimant had disability. The hearing officer determined that: (1) the compensable injury is not a producing cause of claimant's current problems; (2) carrier's dispute was adequate under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6 (Rule 124.6); (3) there was no knowing election of remedies; and (4) claimant filed a claim within one year. Claimant appealed the determinations regarding cause of the current condition, disability, and adequacy of the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), all on sufficiency grounds. Carrier responded that the Appeals Panel should affirm the hearing officer's determinations. In its cross-appeal, carrier appealed the determinations regarding filing a claim within one year and election of remedies, both on sufficiency grounds. Carrier also appealed regarding producing cause, noting what appears to be a typographical error in the hearing officer's decision. Carrier also asserts error in the admission of an exhibit. The file did not contain a response from claimant.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that: (1) his current low back and neck problems are not related to the _____, compensable injury; and (2) he did not have disability. Claimant asserts that: (1) Dr. R took him off work for both his _____, injury and his earlier compensable injury of _____; (2) the evidence showed that his _____, injury was very severe; and (3) he sought medical treatment only twice after his _____ injury because it was difficult to obtain treatment and because and he was afraid to complain and lose his job.

The parties stipulated that claimant sustained a compensable hip and back contusion injury on _____. Claimant agreed that he was injured at work on _____, while working for (employer) when he was thrown about seven feet after being hit by a piece of machinery. Claimant testified that his low back, neck, and leg were painful; that Mr. M, the safety man, took him to the doctor; that Mr. M talked to the doctor and then told claimant that what he was suffering from was a disease of the bones that is not due to the accident; and that insurance was "not going to cover it." Claimant said work was slow after that, that he sometimes drew unemployment benefits, that he did not work for any other employer, and the next time that he sought medical treatment was in September 1999, with Dr. R. Claimant's former supervisor, Mr. C, who no longer works for

employer, said that claimant continued to work the day of the accident; that he was told claimant was bruised and had been placed on light duty; and that claimant continued to complain of pain from _____ through December 1998, when he was laid off. Claimant said he did not return to the doctor and that he went back to work because he was told that the carrier had nothing to do with his accident. Claimant said he had sustained an earlier work-related injury in November 1997. Claimant said he has not looked for work since his layoff because he suffers from numbness and shocking sensations. He said he began to see Dr. R in September 1999, that Dr. R took him off work then, and that Dr. R has not released him to return to work. An Employer's First Report of Injury or Illness (TWCC-1) dated June 29, 1998, indicates that claimant claimed a _____, injury to his shoulder and hip, and does not indicate whether it was filed with the Texas Workers' Compensation Commission (Commission).

A June 27, 1998, medical report states that the diagnosis is lumbar degenerative disc disease and a "bone island" in the right femur. A June 27, 1998, return-to-work slip states that claimant could do only light-duty work until July 1, 1998. A December 1999 letter from Dr. R states that both the November 1997 and _____ work-related injuries are the cause of claimant's back and neck pain and the cervical root compression syndrome and lumbar sprain.

Claimant had the burden of proof regarding causation and the current condition. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The use of "magic words" by an expert does not in itself establish causation, and 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.

The hearing officer considered the evidence and concluded that the _____, compensable injury is not a "producing cause of claimant's neck and back problems." We reform Finding of Fact No. 4 to state that "the claimant's current low back problems . . . and neck problems . . . were not caused by the injury sustained on _____." In his appeal of this determination, claimant points to evidence in the record that he contends supports his contentions. Whether the current condition is related to the compensable injury was a question of fact for the hearing officer to decide. We will not reverse her determinations because they are not against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Claimant contends the hearing officer erred in determining that he did not have disability. The hearing officer did not specifically determine that claimant did not have disability, but did determine that claimant did not lose any time from work due to the _____ injury. Claimant had claimed disability from January 1999 to the date of the CCH. From the evidence, the hearing officer could determine that, after working light duty for a few days, claimant returned to regular duty after the _____ injury; that he later stopped working because employer did not have work for him and then he was laid off; he was not taken off work by Dr. R until September 1999; and that the reason he was of work

was unrelated to the _____ injury. From the decision and order, it is apparent that the hearing officer determined that claimant did not have disability. We have reviewed the hearing officer's determinations and we conclude that they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Claimant contends the hearing officer erred in determining that carrier's TWCC-21 stated a sufficient dispute regarding the current condition. The TWCC-21 stated that:

Carrier admits an incident occurred on _____, to the right back shoulder and rt. hip. Claimant was released to light duty and signed a bona fide offer 8/27/98, released to regular duty 7/2/98. Claimant was laid off 12/98. Carrier disputes the claimant's alleged occupational disease is an ordinary disease of life Further, such condition is not documented that [sic] the claimant's alleged condition is causal [sic] related to his employment

The hearing officer determined that the grounds stated were adequate pursuant to the rule that was then in effect, Rule 124.6.¹ After reviewing the evidence, we conclude that the hearing officer did not err in determining that the TWCC-21 in this case was sufficient to apprise claimant that carrier was disputing regarding causation of the current condition on the ground that the "current condition" was unrelated to the compensable injury and is due to an ordinary disease of life. See Texas Workers' Compensation Commission Appeal No. 93202, decided April 28, 1993; Texas Workers' Compensation Commission Appeal No. 952063, decided January 18, 1996. We conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

In its cross-appeal, carrier contends that the hearing officer erred in determining that claimant timely filed a claim within one year of the _____, injury. An Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) states that claimant sustained a low back, hip and right leg injury on _____. It is date-stamped received by the Commission on November 5, 1999. However, claimant testified that a Commission employee at the City 1 field office helped him to fill it out. The TWCC-41 is dated June 7, 1999. Carrier stated at the CCH that this claim appeared to be timely filed.

From the evidence, the hearing officer could determine that claimant filed a claim within one year. We conclude that the hearing officer's determinations in this regard are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Carrier contends the hearing officer erred in determining that there was no election of remedies barring claimant's recovery. From claimant's testimony, the hearing officer

¹Repealed effective March 13, 2000.

could determine that claimant was confused about whether there was workers' compensation insurance regarding his _____ injury. Mr. C testified that employer represented that it was self-insured. Mr. M said that employer paid the medical bills and did not "turn in" claims that did not involve lost time. Claimant said Mr. M told him that carrier would not pay benefits. We conclude that the hearing officer's determination about a knowing election of remedies is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Carrier complains that the hearing officer improperly admitted claimant's TWCC-41 as a hearing officer's exhibit. Claimant had not timely exchanged the TWCC-41. We conclude that the hearing officer could consider this record pursuant to her duty to develop the record. We perceive no error. See Texas Workers' Compensation Commission Appeal No. 981114, decided July 9, 1998.

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge