APPEAL NO. 000411

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 the respondent/cross-appellant (carrier) contested compensability in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6 (Rule 124.6); whether the appellant/cross-respondent (claimant) is barred from pursuing workers' compensation benefits because of an election of remedies; whether the claimant timely filed a claim for compensation with the Texas Workers' Compensation Commission (Commission) within one year of the injury as required by the Texas Labor Code, Section 409.003 and, if not, whether good cause exists for failing to do so; and whether the claimant had disability resulting from the injury of _____. The hearing officer determined that: (1) claimant's current low back problems and neck problems are not related to the compensable injury of _____; (2) carrier's dispute in its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) was adequate under Rule 124.6; (3) there was no knowing election of remedies; (4) claimant did not file a claim within one year of the injury, but he had good cause for failing to do so; and (5) claimant did not have disability as a result of the _____, injury. Claimant appealed the determinations regarding cause of the current condition, disability, and adequacy of the TWCC-21, on sufficiency grounds. Carrier responded that there was no error in the complained-of determinations. In its cross-appeal, carrier appealed the determinations regarding filing a claim within one year and election of remedies, on sufficiency grounds. 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; (2) he did not lose any time from work due to that injury; and (3) claimant did not have disability. Claimant asserts that: (1) Dr. R took him off work for both his _____, injury and his later injury in _____; (2) the evidence showed that his _____, injury was serious; and (3) he sought medical treatment only once after his _____, injury because he could not afford it and he was afraid to complain and lose his job.

The parties stipulated that claimant sustained a compensable upper back contusion injury on _____. Claimant agreed that he was injured at work on _____, while working for (employer) when a heavy collar hit him in the back. Claimant's former supervisor, Mr. C, who no longer works for employer, said that he initially thought claimant was dead, that claimant went to the doctor, that he came back to work the next day, and that he had a hard time moving. Claimant said he did not return to the doctor and that he went back to work because he was afraid of losing his job and because the employees received bonuses if there were no injuries. Claimant said he sustained another work-

related injury in _____. Claimant was laid off in December 1998. Claimant said he has not looked for work since his layoff because he is not well and 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, and that Dr. R has not released him to return to work. An Employer's First Report of Injury or Illness (TWCC-1) dated December 4, 1997, indicates that claimant claimed a _____, injury to his upper back, and does not indicate whether it was filed with the Commission. An Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated June 7, 1999, states that claimant sustained a back and neck injury on _____. It appears to be date-stamped by the Commission on June 7, 1999.

A December 2, 1997, medical report states that the diagnosis is "back strain after trauma," that claimant may return to light-duty work, and indicates that he may return to regular-duty work on December 6, 1997. A September 20, 1999, medical report from Dr. R states that claimant had spondylosis and muscle spasms, that he may return to limited work in December 1999, and that he will achieve maximum medical improvement in March 2000. In a December 9, 1999, medical report, Dr. R noted both the _____ and _____ work-related injuries and stated that "both accidents . . . are the cause of [claimant's] symptoms and the delay of treatment seems to be a legal problem more than a medical one."

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, decided May 9, 1995.

The hearing officer considered the evidence and concluded that claimant's current back and neck problems are not related to the 1997 work-related injury. In his appeal, claimant points to evidence in the record that he contends supports his request for review. 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 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).

Claimant contends the hearing officer erred in determining that he did not have disability. The hearing officer determined that the current neck and back problems were not "sustained during" or "part of" the 1997 work-related injury. The hearing officer determined that claimant did not have disability from January 1999 to the date of the CCH, as claimant had contended at the CCH. The hearing officer determined that any inability to obtain and retain employment at wages equivalent to the preinjury wage was not due to claimant's _____ injury. We have reviewed this determination and we conclude that it is not against the great weight and preponderance of the evidence. Cain.

Claimant contends the hearing officer erred in determining that carrier's June 1999 TWCC-21 stated a sufficient dispute regarding the current condition. The TWCC-21 states that:

> Carrier admits an accident occurred around _____ or _____ to the back & neck area. Claimant [returned to work] 12/3/97, released full duty 12/10/97. Claimant laid off 12/98. . . . Carrier disputes the claimant's alleged current condition is related to the incident around _____ - _____. There is no evidence to support the claimant's condition is [causally] related to his employment. Claimant's condition is an ordinary disease of life . . . .

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 condition is an ordinary disease of life. *See* Texas Workers' Compensation Commission Appeal No. 952063, decided January 18, 1996. We conclude that the hearing officer's conclusion 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: (1) claimant "reasonably relied" on statements made by employer that it had "taken care of the claim", and (2) claimant had good cause for not filing a claim within one year. Carrier asserts that: (1) no one at employer ever told claimant there was no workers' compensation coverage; (2) the testimony from claimant's supervisor, Mr. C, was contradictory; and (3) Mr. M, the safety director, said he never told claimant there was no workers' compensation coverage or that claimant should file under his group health insurance.

The claim for the _____, injury was filed in June 1999. Claimant said he filed a claim within weeks of finding out from Mr. C that this was required. Claimant testified that he thought he did not need to do more than file an accident report and that he had been told that employer would take care of the claim. From the evidence, the hearing officer could determine that claimant had good cause for failing to file a claim within one year. *See* Texas Workers' Compensation Commission Appeal No. 94274, decided April 18, 1994. Regarding the credibility issues raised by carrier, these were for the hearing officer to determine. We conclude that the hearing officer's determinations are not against the great weight and preponderance of the evidence.

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 could determine that claimant was confused about whether there was workers' compensation insurance regarding his _____ injury. Mr. C testified that employer

[1]Repealed effective March 13, 2000.

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. 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.

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