

APPEAL NO. 000440

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 February 3, 2000. The hearing officer determined that the appellant/cross-respondent's (claimant) compensable lower back injury is a producing cause of his anxiety but not a producing cause of his hypertension, coronary thrombosis, brain damage, and comatose state. The claimant appeals, contending that his low back injury caused his hypertension and requesting we review the records of his treating doctor. The claimant also objects to deposition of Dr. M because Dr. M was not sufficiently familiar with his case to reach the conclusions that he did and complains that the claimant's wife was unable to attend the deposition because it was held out of town. The respondent/cross-appellant (carrier) replies that the evidence sufficiently supports the findings of the hearing officer that the claimant's compensable injury was not a producing cause of his hypertension, coronary thrombosis, brain damage and comatose state. The carrier files a conditional request for review, arguing that the hearing officer erred in finding that the claimant's compensable injury was a producing cause of his anxiety, contending the evidence was inconclusive in this regard.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarized the evidence and provides the rationale for his decision as follows in the portion of his decision entitled "Statement of the Evidence":

This unfortunate case raises the question of the compensability of the claimant's heart attack and its resulting coma as a follow-on injury resulting from an original injury to his back. The argument presented by the claimant's wife [Ms. B] is that the claimant developed hypertension secondary to the stress and changes in his life brought on by the events following his severe lower back injury, including his chronic pain, and that the hypertension caused his heart attack, which caused brain damage, leaving the claimant in a vegetative state. It was argued that because the hypertension caused the heart attack, that it, as well as the vegetative state that it caused, are now compensable.

[Ms. B] testified that at one time the claimant had been a very active and physical man, with no known hypertension or heart disease. However, she asserted that after sustaining his injury [claimant's] blood pressure began to increase, and that he was in constant stress and frequently angry because of the pain that he was in, and other factors which included the loss of his job, the inability to support his family and the fact that he could no longer do the physical activities which he once enjoyed. A psychiatric evaluation was

performed on the claimant in early 1994 which states that the claimant reported that his injury had a terrible impact on him. It notes that the claimant did not like being idle and that he was having financial difficulties. It also reflects that he expressed fear that he would not be able to support himself in the future.

[Ms. B] testified that on June 8, 1998, [claimant] went to his treating doctor, [Dr. K], and returned to his home. She testified that she spoke to him briefly on the telephone and that he did not seem upset. She later learned that he had sustained a severe heart attack moments after that conversation. The brain damage caused by this heart attack has left the claimant in a complete vegetative state from which he has not recovered, and may never recover. [Ms. B] is convinced that but for [claimant's] injury and the subsequent changes that it caused in his life, [claimant] would not have developed hypertension, and therefore, would not have had this tragic heart attack.

In support of her contentions, [Ms. B] offered the medical records of [Dr. K]. [Dr. K] wrote that the claimant would frequently become enraged because of his aggravation and his feelings of worthlessness which were brought on by his inability, due to his injury, to participate in activities which he once enjoyed. [Dr. K] opines that during one of these episodes of uncontrolled rage, the claimant's blood pressure soared, causing plaque within his arteries to rupture, which caused a coronary thrombosis. Accordingly, [Dr. K] theorizes that the claimant's heart attack was caused by the rage and anger associated with his injury situation. He concludes that "[claimant] is in a vegetative state because his anger over the complete loss of control of his life precipitated a coronary event."

The remainder of [Dr. K's] narrative's [sic] were reviewed and reveal that the claimant had complained of chest pains previously in December 1997, but the medical opinions at the time attributed those symptoms to his thoracic spine injury. The claimant was evaluated by a cardiologist, [Dr. AM] in January 1998 at the request of [Dr. K]. That record indicates that an evaluation was felt to be in order due to the "numerous cardiac risk factors" which were present. [Dr. AM] notes that the claimant had hypertension as well as a family history of heart disease. The history notes that [claimant] had been suffering from chest discomfort. [Dr. AM] concluded that while the claimant did not have evidence of coronary disease at the time of the examination, he was at a high risk for the development of coronary disease unless he significantly changed his lifestyle. The claimant was counseled to quit his one and one-half pack per day smoking habit which he had maintained for over 28 years, and was prescribed medication to ease the withdrawal. However, subsequent records showed that [claimant] continued smoking and did not follow through with his cholesterol management program as suggested.

[Dr. K's] records document that by February 1997, he had become concerned about the claimant's blood pressure although elevated blood pressure had been commented upon in July 1996. The medical records show that back surgery was considered only as a last resort. A letter to the adjuster from [Dr. K] in 1993 reveals his reluctance to recommend surgery for [claimant] because [claimant] also suffered from post traumatic stress disorder related to his service during the Vietnam War and had experienced flash-backs while coming out of anesthesia and became explosive. [Dr. K's] chart notes were also reviewed. These notes show that the claimant received an astounding number of pain shots with near daily frequency.

[Ms. B] argued that the claimant's medical records from before his injury proved that he did not have hypertension, but no expert testimony was provided on that point. My review and comparison of the pre-injury blood pressure readings in [Dr. K's] records show that there were indeed many readings as high or higher as those readings taken after the injury. The remainder of the medical evidence submitted by the claimant document a long and complicated course of treatment for the claimant's back injury.

The carrier presented various medical records from 1994 in which a history of hypertension was noted. The carrier also presented the deposition of [Dr. M]. [Dr. M] is a board certified cardiologist who reviewed the claimant's post injury medical records and concluded that the claimant's heart attack was caused when plaque inside of an artery ruptured and caused blood clotting which occluded an artery. [Dr. M] indicated that the people with the highest risk for developing this condition are those people with hypertension, high cholesterol, smoking and family history of heart disease, all of which were present in this case. Although [Dr. M] testified that stress can contribute to elevate blood pressure, it is not the cause of hypertension. [Dr. M] testified that acute and severe anxiety can precipitate a heart attack, but that he did not observe any such triggering mechanism from the records in this case. He testified that the anxiety from which [claimant] suffered was chronic. He testified that there is no known relationship between chronic anxiety and heart attacks, and that he did not believe, based upon reasonable medical probability that the claimant's hypertension was caused by his chronic pain and anxiety.

After careful review of all of the testimony and the medical records, I am unable to conclude that the claimant's lower back injury is a producing cause of his hypertension, coronary thrombosis, brain damage and comatose state, although it was obviously a cause of his anxiety. The claimant was a heavy smoker, with most, if not all, risk factors for the development of coronary disease present. Although it was argued that the claimant did not develop hypertension until after his injury, there was no expert testimony presented indicating that his injury caused his hypertension, and the existence of such a

correlation is beyond the scope of knowledge for a layman. The claimant's treating doctor, [Dr. K], initially stated that [claimant's] heart attack was caused by anxiety and pain associated with his physical condition. Later, [Dr. K] wrote that he had no doubt that the claimant suffered his heart attack during one of his common uncontrolled rages; however, [Ms. B] testified that she spoke to her husband only fifteen minutes before the event, and that he was not upset. I find [Dr. K's] theory to be very speculative, and that the medical evidence presented by the claimant does not establish the required causal link between the claimant's hypertension and heart attack and his original compensable injury. Furthermore, I found the testimony of [Dr. M] to be persuasive. Because [Dr. M] is a board certified cardiologist, his opinions were given greater weight than those of [Dr. K], whose opinions were based on an assumption that the claimant was enraged at the time of the heart attack. Even though all of the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93854, decided November 9, 1993; Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. This is also true of the extent of an injury, Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993, as well as a so-called "follow-on injury," an injury resulting from a compensable injury or treatment thereof, Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

Claimant had the burden to prove injury. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet

this burden in regard to his hypertension, coronary thrombosis, brain damage and comatose state. We understand that the records of Dr. K support the claimant's theory of injury, but the hearing officer was not required to accept these reports at face value. He found Dr. K's theories in regard to these injuries to be speculative and he found the opinion of Dr. M more persuasive. Weighing the conflicting evidence was the province of the fact finder. Also we note that in regard to the coronary thrombosis, Section 408.008 places an additional burden on a claimant seeking to prove the compensability of a heart attack.

We understand that the claimant objected to the deposition of Dr. M. We also understand that Dr. M did not examine the claimant and that the claimant's wife was unable to travel out of town to attend Dr. M's deposition due to the fact that she is caring for the claimant. However, we note that the carrier properly requested the taking of Dr. M's deposition and much of his testimony dealt with general scientific principles of cardiology. We do not find error in the admission of Dr. M's deposition into evidence or the hearing officer's reliance on it.

In regard to the carrier's appeal of the hearing officer's finding that the compensable injury was a producing cause of the claimant's anxiety, we note that this finding was supported by medical evidence from Dr. K and, to a lesser degree, from Dr. M. This was a factual issue and applying the standard of review discussed above, we find no error.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge