

APPEAL NO. 000689

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 14, 2000, and continued on March 15, 2000, due to illness of the appellant (claimant). The issues at the CCH were whether the claimant=s compensable injury sustained on _____, was a producing cause of the claimant=s aneurysm formation, clots, and myocardial infarctions; and whether the claimant had disability. The hearing officer determined that the compensable injury of _____, was not a producing cause of the claimant=s aneurysm formation, clots, and myocardial infarctions; and that the claimant did not have disability. The claimant appeals, expressing his disagreement with these determinations and asserting error in an evidentiary ruling of the hearing officer. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant offered into evidence a doctor's report that is dated January 13, 2000. The carrier objected on the grounds of lack of timely exchange of the document and failure to timely exchange the name of the doctor. The hearing officer found good cause for the lack of timely exchange of the document itself. The claimant stated that he sought the document shortly before or after Thanksgiving Day 1999, some seven weeks before the second session of the CCH, but "forgot" to exchange the same with the carrier. The hearing officer refused to admit the statement on grounds that the claimant did not timely exchange the doctor's name. Clearly, there was evidence that the claimant failed to exchange this information as it became available to him. We find no abuse of discretion in the refusal of the hearing officer to admit the document on the basis that the name of the doctor was not timely exchanged. Texas Workers' Compensation Commission Appeal No. 92110, decided May 11, 1992.

The claimant, who was 55 years of age at the time of the CCH, had a prior history of heart disease, including a double bypass operation sometime around 1988. He said he had been essentially pain free and without heart further problems over the four or five years prior to the injury in this case. On November 22, 1999, he suffered an electrical shock while attempting to repair a motor. He was positioned in such a way that he could not remove his hand from the machine until it was turned off. He developed chest pains over the next couple days and saw Dr. V, his cardiologist. An EKG on November 25, 1998, showed an inferior wall myocardial infarction. Cardiac catheterization was done on February 23, 1999. The circumflex artery was 100% occluded; the right coronary artery was 80% occluded. There was also evidence of myocardial necrosis and an aneurism. It was the claimant=s position that the electrical shock caused a preexisting blockage in an artery to fully close as well as his other current cardiac problems.

Section 401.011(26) defines injury as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm."¹ The necessary causation between the electric shock and the subsequent heart conditions had to be proved by expert evidence to a reasonable degree of medical probability. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.).

The claimant's medical evidence consisted of a November 15, 1999, opinion of Dr. V that an aneurysm "can be" caused by electrical shock; an aneurysm "maybe" producing the clots; and that the shock "can cause" muscle injury and myocardial infarctions. Dr. V also concluded that the aneurysm in this case did not cause any blockage to the heart and that "most likely" the artery disease on which he performed the catheterization was not due to electrical shock. Earlier, on October 1, 1999, Dr. V wrote that the "causal relationship of Myocardial Necrosis Electrical Shock with the abnormal Left Ventricular Contractions with production of the LV ANEURYSM [was] most likely." Dr. L wrote the ombudsman on September 28, 1999, that many of the claimant's numerous neurological problems were caused by the electrical shock, while others may or may not have been. He further said that the "cardiac findings also possibly related to the shock injury although causality, on a philosophical basis, may be difficult to establish."

The carrier introduced "peer review" evidence. Dr. W reviewed the claimant's records at the request of the carrier and stated that electric shock "might be expected to cause fibrillation of the heart and subsequent cardiac arrest." If the consequences of the shock were not immediately fatal, Dr. W did not believe the shock would cause continuing problems. He found the current studies "completely compatible with a claimant with previous coronary bypass surgery. . . ." In his opinion, there was no evidence that the shock "could cause acute occlusion of the coronary bypass graft" and that the claimant's "coronary abnormalities are totally unrelated to the work related right upper extremity electrical shock injury." On July 9, 1999, Dr. E reported the results of his records review and could find "no evidence to support the contention that the electrical shock had produced any deterioration or exacerbation of pre-existing cardiac disease. . . ." He believed the shock caused some atypical chest pain "which only lasted a few seconds," but found "no reason to believe that it had caused any deterioration or exacerbation of his cardiac status."

The claimant had the burden of proving that the electric shock caused his current cardiac condition. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether the shock was a cause of the current cardiac condition presented a question of fact for the hearing officer to decide. Section 401.165(a)

¹We do not consider the provisions of Section 408.008 dealing with the compensability of heart attacks applicable in this case.

further provides that the hearing officer was the sole judge of the weight and credibility of the evidence. In her role as fact finder, she could accept or reject in whole or in part any of the evidence, including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ); Texas Workers' Compensation Commission Appeal No. 93819, decided October 28, 1993. The hearing officer did not find that the claimant's expert evidence was persuasive or that it rose to the level of reasonable medical probability rather than possibility. Rather, she found the carrier's evidence of no causal relationship more persuasive and credible. 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 find the evidence sufficient to support the determination of the hearing officer that the claimant's compensable injury of November 22, 1999, was not a producing cause of his aneurysm formation, clots, and myocardial infarctions.

The claimant premised his claim of disability solely on his cardiac condition. Having affirmed the finding that the cardiac condition was not part of the compensable injury, we find the evidence sufficient to support the determination that the claimant did not have disability.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Dorian E. Ramirez
Appeals Judge