

APPEAL NO. 000822

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 March 23, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable (hearing loss) injury on \_\_\_\_\_, and that claimant has not had disability resulting from the injury. An issue of timely notice was resolved by stipulation that the claimant timely reported his injury stipulated to by the parties. Appellant (carrier) appeals, contending that loss of hearing due to one specific exposure requires expert medical evidence; that claimant's hearing loss was an ordinary disease of life; and that the medical evidence was insufficient based on a reasonable medical probability standard to support the hearing officer's decision. Carrier states that it requests a review of the hearing officer's finding that claimant had disability but it agrees with the hearing officer's conclusion that claimant did not have disability. We believe that carrier misread the hearing officer's finding regarding whether claimant had ("not been unable to obtain and retain employment") and hold that the hearing officer's decision on no disability has not been appealed and has become final. The appeal file does not contain a response from claimant.

DECISION

Affirmed.

The background facts are not in dispute. Claimant was employed by (employer) and on \_\_\_\_\_, as claimant was walking from employer's lunch room to his work area, he was suddenly exposed to loud riveting some eight to ten feet away. Claimant testified that he was not using his ear protection because he had just left the lunch room and was going to his work area. Claimant testified that he experienced "ringing and popping" in his right ear and experienced a noticeable decline in his ability to hear.

Also undisputed is that claimant had some preexisting hearing loss and medical conditions which may have affected his hearing, such as a pituitary tear gland tumor which required surgery and radiation, and that the employer's premises were quite noisy (exceeding OSHA noise standards) and hearing protection was usually worn. Claimant had regular hearing tests performed with the last hearing test before the \_\_\_\_\_, incident having been performed on August 26, 1998. The August 1998 test indicated "normal low frequency hearing sensitivity, but a severe high frequency hearing loss in the right ear" and "a relatively flat severe to profound hearing loss in the left ear." A similar test, conducted on January 27, 1999, indicated "a relatively flat severe to profound hearing loss in the right and left ear." Carrier emphasizes that claimant is asserting specific hearing loss due to one specific exposure rather than an occupational disease due to long-term exposure.

Dr. C, claimant's regular doctor, had referred claimant to Dr. Le, an otolaryngologist. In a report dated January 31, 1999, Dr. Le noted "insert phones" had not helped claimant and that claimant had "miserable" speech discrimination scores. In a report dated April 6,

1999, Dr. Le suggested that the greatest component of claimant's hearing loss "is neuronal in origin" and that the "very poor speech discrimination scores . . . is a further progression of his noise induced hearing impairment." In a June 23, 1999, assessment, Dr. Le remarks that the "neuronal degeneration . . . is almost certainly exacerbated by acoustic trauma in the occupation of aircraft assembly." In a September 28, 1999, note, Dr. Le remarks:

It is my medical opinion that more likely than not [claimant's] sensorineural hearing loss has been caused by acoustic trauma. In all medical probability, acoustic trauma is the underlying factor to his hearing impairment.

In a note dated August 31, 1999, Dr. Lo, apparently a consulting otolaryngologist, commented that claimant's "noise induced hearing loss pattern in his right ear [was] in all medical probability . . . due to excessive noise exposure at work."

Claimant's medical records were reviewed by Dr. P, an ear, nose, and throat specialist, who, in a report dated December 1, 1999, commented:

It is difficult to account for the sudden loss of acuity in the left ear. The right ear hearing loss is typical for a gradual decline with age and medication and accumulated noise exposure. The most likely explanation for the left ear hearing loss is "sudden hearing loss syndrome," or acute hypoacusis. This is a poorly understood but fairly common disease entity, thought by many to be due to a vascular disease and by others to be a viral illness. About half of the victims recover much of their hearing; in the other half, the hearing loss is permanent.

It is clear the question is what caused the left ear hearing loss between 8/26/98 and 1/27/99.

My expert medical opinion is that [claimant] suffered a sudden hearing loss syndrome in his left ear in this time period. I have no opinion as to what caused his sudden hearing loss. To my knowledge, there is no evidence that noise exposure causes sudden hearing loss syndrome, although some experts continue to postulate a causal relationship.

Carrier, at both the CCH and on appeal, asserts that there is no probative medical evidence that the single episode on \_\_\_\_\_, caused claimant's accelerated hearing loss rather than a continuous exposure to noise and that hearing loss is an ordinary disease of life. The hearing officer found:

#### **FINDING OF FACT**

4. On \_\_\_\_\_, Claimant sustained an injury to both ears as he was providing his job duties for Employer, as evidenced by the fact that he had ringing and popping in his right ear, as evidenced by the fact that

after the incident he had increased difficulty in hearing, and as evidenced by the fact that testing on August 26, 1998 and January 27, 1999 indicated that Claimant sustained a substantial hearing loss during the period between August 26, 1998 and January 27, 1999.

We hold that the hearing officer's decision is supported by sufficient evidence. Even Dr. P references sudden hearing loss syndrome and while he Dr. P does not believe noise exposure causes sudden hearing loss syndrome, he concedes some experts continue to postulate a causal relationship. The evidence of whether a one-time exposure can cause a sudden and significant hearing loss is in conflict although rather clearly much of claimant's hearing loss was caused by exposure to loud noise in his employment.

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 decline to substitute our opinion for that of the hearing officer.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp  
Appeals Judge

CONCUR:

Elaine M. Chaney  
Appeals Judge

Judy L. Stephens  
Appeals Judge