

APPEAL NO. 001105

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 April 20, 2000. The hearing officer concluded that the appellant's (claimant) compensable left knee injury sustained on _____ [sic], is not a producing cause of her psychological conditions and that the respondent (self-insured) did not waive the right to contest the compensability of the claimed psychological conditions by not contesting compensability within 60 days of being notified of these conditions. In her appeal, the claimant disputes these legal conclusions and all the substantive underlying findings of fact for what amounts to a challenge to the sufficiency of the evidence to support them. The self-insured urges in response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

Although the hearing officer states the injury date as _____ in Conclusion of Law No. 3 and in the decision, the record reflects that the injury date was _____. The claimant testified that on _____, while employed by the self-insured as a school bus driver, she fell while disembarking from a bus and twisted her left knee. She said that in late January 1997, subsequent to her left knee arthroscopic surgery in December 1996 and a postoperative knee infection, she developed depression which she attributed to the chronic knee pain, which interrupted her previous way of life and even made her dependent on others for help with personal hygiene. The claimant also indicated that she was upset with the self-insured's denial of physical therapy.

Dr. C, who treated the claimant's knee, wrote on April 22, 1997, that the claimant is apparently having some significant psychological problems because of the chronic pain. Dr. C reported on October 15, 1997, that the claimant has become increasingly depressed; that treatment for her pain syndrome, which he suspected to be reflex sympathetic dystrophy, should be expedited; and that he thought her "current psychiatric problem is directly related" to her documented postoperative knee complications.

The claimant's records reflect that Dr. C referred her to a pain management specialist, Dr. P. The claimant indicated that she also saw Dr. JP, Dr. M, and Dr. A for her psychological problems and that at one point she was admitted to a mental health care facility for psychological treatment. Dr. M wrote on November 15, 1997, that "[s]ince her depressive experience developed in the midst of a major disruption in her life caused by a knee injury, it seems most reasonable that her psychiatric disturbance is a direct outgrowth of her work related injury."

Dr. C's records reflect that on June 1, 1998, he certified that the claimant had reached maximum medical improvement on May 28, 1998, for her left knee injury and that

he assigned an impairment rating (IR) of 10%. Dr. C noted in an addendum to a March 31, 1998, report that the claimant said she was undergoing treatment at the mental health facility and that she may need to contact a physician there to provide an IR based upon mental and behavioral disorders. The February 24, 1999, report of Dr. RM reflects that he, as a designated doctor, assigned the claimant an IR of 48% consisting of six percent for the left knee and 45% for the claimant's "moderate impairment for ADL [activities of daily living]."

The claimant testified that she had not had psychological problems before the knee injury but acknowledged that her brother had psychological problems, including hallucinations for which he was taking Prolixin. As for her hallucinations, the claimant said that on some occasions she thought she heard someone calling her name and on another occasion she thought someone was in the house.

Dr. FP, a clinical psychologist, reported on October 5, 1999, that he reviewed the claimant's medical records; that in his November 15, 1997, report of his psychiatric evaluation, Dr. M attributed the claimant's serious psychiatric disorder to a "major disruption in her life caused by a knee injury"; that the psychiatric disorder is not the type of disorder that will follow from a relatively minor knee injury; and that he finds no evidence in the medical records that the knee injury may have actually caused a major disruption. Dr. P notes that the claimant's treating physicians believed her capable of returning to work without impairment a month and one-half after the fall. Dr. P further stated that, based on his clinical experience, patients who undergo arthroscopic surgery do not develop a psychiatric condition that includes psychosis with hallucinations; that the psychological presentation is consistent with a family history, namely the claimant's brother who suffers from a psychiatric condition including hallucinations requiring very powerful antipsychotic medications; and that the claimant's psychiatric presentation is more consistent with a family history of a psychiatric disorder, as opposed to one that can be attributed to the claimant's injury. Dr. FP reiterated on February 29, 2000, that the claimant has a family history of severe mental illness; that the claimant herself has severe mental illness; that such severe mental illness is not caused by a minor injury; and that the probabilities are that her major psychiatric disorder is related to biological factors of familial origin.

Dr. JP wrote on March 23, 2000, that the claimant has a diagnosis of "Major Depression, Recurrent, Severe with Psychotic Features"; that her illness continues to be exacerbated by her knee injury from a work-related accident; and that, in his opinion, the chronic pain from the claimant's knee injury has led to her depression and continues to interfere with her daily living. Dr. JP expressed a similar opinion in a letter dated July 29, 1998, and noted the claimant's financial problems and obesity. Dr. JP's May 29, 1997, admission record for the mental health facility states the diagnoses as major depressive disorder, severe, with auditory hallucinations; multiple medical problems including diabetes mellitus, hypertension, orthopedic problems, and chronic pain disorder; and severe psychosocial stressors.

Dr. Y, a clinical psychologist, wrote on March 8, 2000, that he reviewed the claimant's records and that he agreed with Dr. FP's report. After making a number of observations, Dr. Y opined that there is no evidence to support the relationship of a Major Depressive Disorder with the claimant's knee injury of _____. Dr. Y further stated that the claimant's functional limitations appear to be mostly self-imposed over the last several years and excessive for her condition and that the records suggest a possible factitious disorder or malingering.

Concerning the extent-of-injury issue, the claimant had the burden to prove by a preponderance of the evidence that her left knee injury of _____, extended to and included her psychological conditions. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in 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)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. We are satisfied that the disputed findings relating to the extent-of-injury issue are sufficiently supported by the evidence. The hearing officer specifically noted Dr. FP's opinion in a finding of fact. The hearing officer could also consider the opinion of Dr. Y which agrees with Dr. FP's opinion.

As for the carrier waiver issue, when the hearing officer mentioned a new Texas Workers' Compensation Commission (Commission) rule precluding a carrier from being found to have waived the right to contest the compensability of the extent of an injury, the claimant argued, in essence, that this rule had not been adopted at the time the self-insured failed to dispute her psychological condition within 60 days after receiving written notice of it.

We observe that the claimant was not particularly precise in identifying which document or documents she was relying on as having provided the self-insured with written notice of the claimed compensability of her psychological problems and that the hearing officer finds merely that the self-insured "became aware of Claimant's psychological conditions by January 29, 1999," without identifying a specific written document which constituted written notice of the claimed extended injury. However, reversal and remand is not required. A new rule, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), effective March 13, 2000, provides that Section 409.021 and the implementing provisions of Rule 124.3 "do not apply to disputes of extent of injury" and that if a carrier receives a medical bill that involves treatments or services believed not to be related to the compensable injury, the carrier shall file a notice of dispute of extent of injury not later than the earlier of the date the carrier denied the medical bill or the due date for the carrier to pay or deny the medical bill. In Texas Workers' Compensation Commission Appeal No. 000713, decided May 17, 2000, the Appeals Panel held that "the new Rule 124.3 is applicable in those cases in which a CCH is convened on or after March 13, 2000, to

address a disputed issue of carrier waiver in the context of an extent of injury question, because it precludes the Commission from imposing a waiver after that date." *And see* Texas Workers' Compensation Commission Appeal No. 000784, decided May 30, 2000, which applied the new rule to a case in which the CCH was held prior to March 13, 2000. Accordingly, the hearing officer's conclusion of law that the self-insured did not waive the right to contest the compensability of the claimed psychological condition is legally correct.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge