APPEAL NO. 001138

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 14, 2000. The hearing officer determined that the appellant's (claimant) compensable injury does not extend to include an injury for hearing loss and visual loss (bilateral superior hemianopia). The claimant appealed, expressing his disagreement with this determination. The respondent (self-insured) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant, who was 63 years old at the time of the CCH, worked as a school bus driver. On two separate dates, he said, he was struck about the head and neck by a student. Though alleged to be the result of both assaults, this claim of hearing and visual losses proceeded on the theory of one injury on _____. The self-insured accepted only bruises and lacerations as part of the compensable injury. The claimant, who suffers from diabetic retinopathy, an ordinary disease of life, asserts that his hearing and visual losses were caused by being struck on both ears and the head by the student's fists.

The claimant had the burden of proving his compensable injury extended to his hearing and visual losses. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether it did was a question of fact for the hearing officer to decide and, because causation in this case was not within ordinary experience, the claimant was required to prove his case 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.).

In his appeal, the claimant relies on the opinions of Dr. B, a general practitioner; Dr. S, an opthalmologist; and Sr. SZ, a family practitioner, to prove his case. The claimant points to no specific report of Dr. B that addresses causation. Having reviewed this evidence from Dr. B, we conclude it supports no more than the proposition that the claimant had a worsening of sight and hearing after the date of injury without a specific assertion of causation. Dr. S wrote on April 30, 1999, that "I believe the hemianopia may be related to the trauma." Dr. SZ wrote on January 4, 2000, that the claimant's hearing loss was caused by the injury "based on my physical examination" and that his diagnoses were "medically reasonable–there is a causal connection."

Dr. Z, an otolaryngologist, examined the claimant twice and testified on behalf of the self-insured that, in his opinion, the claimant's hearing loss was normal for a man of the claimant's age. He reached this conclusion based on audiometric testing, which he believed showed major inconsistencies and functional overlay, and because the claimant's

hearing loss pattern reflected a nerve loss, not a conductive loss. He further found no damage to the structure of the ear that would be expected if there were conductive loss of hearing. He also noted an equal hearing loss in both ears, which he considered unlikely if trauma caused the hearing loss. Dr. Z did not offer an opinion on the cause of visual loss.

Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In her role as fact finder, she evaluated the evidence and determined what facts had been established by the claimant. There was voluminous medical evidence in this case that could arguably be read as supporting or contradicting the claimant's theory that his hearing and visual loss were caused by the blows to his head. The hearing officer considered this evidence and concluded that the claimant had not met his burden of proof. The claimant argues on appeal that his evidence, in effect, compelled a finding in his favor. 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, we conclude that the evidence was sufficient to support the determination of the hearing officer that the compensable injury does not extend to a hearing or visual loss.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge