APPEAL NO. 001278

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 May 2, 2000. The hearing officer determined that the appellant's (claimant) panic disorder, cognitive dysfunction, memory loss, brain damage, and hair loss were not caused by the compensable injury of _____; that the claimant had disability from June 27 through June 28, 1999; and that the respondent (carrier) was not required to dispute the extent of the compensable injury. The claimant appeals, expressing his disagreement with these determinations. The carrier replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant worked as a news photographer for a television station. He testified that he had been at a photo site from about 6:00 p.m. to 9:00 p.m. on August 26, 1999. Toward the end of this assignment, he said, he starting sweating and on the way back to his car became nauseous, dizzy, and blacked out briefly. He returned to the TV station, rested, did another assignment and went home. The next day he went to an emergency room (ER) and said he was told he was suffering from heat exhaustion. ER records contain a diagnosis of "fatigue." In a Payment of Compensation or Notice of Refused/ Disputed Claim (TWCC-21), the carrier accepted the "injury of heat stroke." The various doctors treating the claimant gave opinions in terms of a diagnosis of heat stroke. There was other evidence in the form of medical treatises which distinguished various heat-related conditions and discussed a range of physiological consequences of hyperthermia. Other medical evidence concluded that the claimant did not have a heat stroke, but was suffering from heat exhaustion unlikely to persist beyond one day in a normal individual.

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." The claimant contended and had the burden of proving that the following conditions naturally resulted from the "heat stroke": panic disorder, cognitive dysfunction, memory loss, brain damage, hair loss, and visual impairment. This question of causation required proof by expert opinion 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 medical evidence included reports of a CT head scan, EEG, and MRI of the brain which were read as normal. The claimant also has a long history of tranquilizer use. Dr. P, the treating doctor, after referral to several specialists, agreed with these doctors that the claimant had a "distinct cognitive defect out of proportion to his level of education" and that this "was related to the heat stroke." Dr. P also noted that the use of some medication

put the claimant at greater risk for a heat stroke and his preexisting history of panic disorder "appeared to be increased by the heat exposure." Dr. P also commented that the "mechanism of the neurological and hair follicle injury are probably due to direct thermal injury and to indirect hypoxemic injury associated with hopotension [sic] and decreased blood flow." Dr. W, a clinical psychologist, concluded that "it appears [the claimant] has suffered a central neurological insult" and that he experienced a "functional decline coinciding with this episode, leading me to believe that there was a physiological insult at that time. His cognitive and memory dysfunction would be effects of brain injury." Dr. WO, apparently the designated doctor, wrote that because of dehydration "or possibly even decreased blood pressure," the claimant suffered ischemic damage to his brain and "[t]his explained the generalized functional loss all the way from vision to balance and cognitive problems." Dr. A, an ophthalmologist, wrote that the claimant experienced "visual decline" after a "heat stroke" but he could "find no organic basis for his subjective visual decline, nor am I suspicious that this may represent some sort of central CNS process."

The carrier introduced the opinion of a peer review doctor who concluded that this was a case of heat exhaustion and that if there had been a true heat stroke, there would have been a "very serious acute physiological derangement of virtually all body functions." He also concluded that the claimant's symptoms were "merely expressions of neuropsychiatric problems present for years."

The hearing officer considered the evidence, made detailed findings of fact, and determined that the various conditions asserted by the claimant "were not caused by the compensable heat exhaustion injury sustained on _____." Finding of Fact No. 16. In his appeal, the claimant expresses disagreement with this determination and cites evidence that he believed supported his position. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In his role as fact finder, he was responsible for evaluating all the evidence and determining what facts had been established. Important in this case was a resolution of the seriousness of the heat-related injury. Clearly, the hearing officer did not find it as serious as a heatstroke, but found only exhaustion as suggested by the ER records and the peer review doctor. In addition, he considered the claimant's preexisting history of physical problems and extensive use of prescribed medications in reaching his determination of causation. The hearing officer was not required to accept at face value the opinion of any doctor, but rather had to consider this evidence in terms of its thoroughness, consistency, and supporting rationale. He simply did not find the claimant's evidence credible on the question of causation. 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 of the credibility of the evidence for that of the hearing officer. Rather, we affirm the findings regarding the extent of the compensable injury as having a sufficient basis in the record of the proceedings below.

Also in issue was whether the claimant had disability from November 9, 1999, premised on the extent of his claimed injury. The hearing officer determined that the effects of the initial injury of heat exhaustion were over by this time. Having affirmed the determination of the extent of the compensable injury, we also affirm the disability finding.

Finally, the claimant contends that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), which provides that a carrier is not required to contest the extent of a compensable injury under penalty of waiving the right to make such a contest and which became effective on March 13, 2000, should not apply in his case. We have held otherwise. Texas Workers' Compensation Commission Appeal No. 000784, decided May 30, 2000, and Texas Workers' Compensation Commission Appeal No. 000713, decided May 17, 2000. The Texas Workers' Compensation Commission is without authority to impose such a waiver in this case.

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

Tommy W. Lueders
Appeals Judge