APPEAL NO. 001430

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 March 27, 2000, with the record closing on May 12, 2000. The hearing officer determined that the respondent (claimant) did have disability and that the compensable injury does extend to include the ailment necessitating a corneal transplant to the right eye. The appellant (carrier) requests our review, asserting that the expert opinions of the doctors selected by the carrier and the doctor selected by the Texas Workers' Compensation Commission (Commission) outweigh the opinions of the claimant's doctors and constitute the great weight of the evidence. The claimant urges in response that the evidence is sufficient to support the hearing officer's determinations.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable injury in the form of receiving foreign matter to her right eye and that she did not injure her left eye on that date.

The claimant testified that on _____, while working at the hospital where she was employed, as she entered a closet a fluorescent lightbulb fell from a ceiling fixture, struck the floor, and exploded; that shards of glass flew up and she was struck in the face and right eye; that her right eye was treated in the emergency room where she was diagnosed with "foreign body/corneal abrasion [right] eye"; that she was referred to Dr. G, an ophthalmologist, for follow-up care; and that Dr. G treated her right eye and eventually suggested a "graft," apparently referring to a corneal transplant. She further testified that she has a bilateral congenital eye disease, keratoconus (a warping of the corneas), which was diagnosed when she was 15 years old and which has been treated with hard contact lenses allowing her to see; that after the corneal abrasion in her right eye resolved, she could no longer wear a hard contact lens in that eye; and that after Dr. G suggested the graft, she saw her optometrist, Dr. E. An undated record of Dr. E states that she has been seeing the claimant for a severe visual problem and that this problem "seems to have worsened" since the on-the-job injury. The claimant further stated she was referred by her attorney to Dr. B and that Dr. B examined her and referred her to Dr. W, an ophthalmologist.

Dr. W's Initial Medical Report (TWCC-61) of November 30, 1999, states that the claimant now has apical scarring secondary to the keratoconus and that she needs a corneal transplant to repair the cornea and restore visual acuity.

Dr. B's follow-up report of December 15, 1999, stated that Dr. W called him and advised that the claimant needs a corneal transplant and that an injury to the cornea, including an abrasion, can aggravate a preexisting keratoconus. Dr. B further stated that

although the claimant had the preexisting keratoconus, he feels, in all medical probability, that the injury of _____, "aggravated her pre-existing condition and accelerated it to the point where it currently necessitates surgery." Dr. B also stated that Dr. W was told to proceed with the surgery. The claimant's representative averred in closing argument that the claimant underwent the corneal transplant on April 5, 2000.

Handwritten notes on the TWCC-61 dated January 24, 2000, of Dr. P, an optometrist who was apparently appointed by the Commission to examine the claimant, reflects that he found central corneal scarring and stromal thinning due to the keratoconus. Dr. P also states that there was "no sign of sequellae" from the _____, abrasion.

On March 23, 2000, Dr. G answered "no" to the carrier's question, "did the foreign body to the right eye enhance, accelerate, or worsen the underlying condition of keratoconus." Dr. G also responded that the claimant would have needed the corneal transplant in the right eye had the incident on _____, not occurred.

On March 24, 2000, Dr. B, a specialist in general and occupational medicine, responded to the carrier's written deposition questions and stated that the work-related injury of _____, "caused acute hydrops of the cornea which, in turn, formed an apical scar" and that "[t]he scarring of the cornea no longer will allow correction by a rigid contact."

Dr. C, who reviewed some of the claimant's records for the carrier, reported on April 26, 2000, that the disease of keratoconus results in thinning and scarring of the central cornea; that the physiological changes to the cornea caused by keratoconus occur on the inside of the cornea; and that a superficial abrasion to the cornea should not in any way affect the underlying physiology of keratoconus. Dr. C concluded that he "saw no way a simple corneal abrasion could, based on the physiology and pathology of the disease, have caused an acute hydrops cornea [water in the stroma of the cornea]" which is an end-stage condition and the normal progression of the disease. Dr. W also noted that he had not examined the claimant, had not taken her history himself, and apparently had not been given the opportunity to review all of the claimant's records prior to the date of injury.

It was not disputed that the work-related aggravation of a preexisting condition can itself constitute an injury in the course and scope of employment. *See, generally*, INA of Texas v. Howeth, 755 S.W. 2d 534, 537 (Tex. App. - Houston [1st Dist.] 1988, no writ). We also note that the carrier did not raise a sole cause defense regarding the preexisting keratoconus. *See, generally*, Texas Employers Insurance Association v. Page, 553 S.W.2d 98 (Tex. 1977).

The Texas Supreme Court has required medical expert opinion on causation to link an act or condition or trauma with a subsequent physical disease or condition when that relationship is beyond the common knowledge and experience of laypersons. Western Casualty and Surety Company v. Gonzales, 518 S. W. 2d 524 (Tex. 1975). To constitute evidence of causation, an expert opinion must rest in reasonable medical probability so as to avoid speculation and conjecture. Insurance Company of North America v. Myers, 411

S.W. 2d 710, 713 (Tex. 1966). However, reasonable probability is determined by the substance and context of the opinion and does not turn on semantics or on the use of a particular term or phrase. *Id.* at 713. Further, the Texas Supreme Court "has never required that the medical expert explain or even understand the precise biochemistry or mechanism by which the initial trauma affects the health or organs of the injured party." Gonzalez, *supra,* at 527.

The carrier contends, in effect, that the opinions of Dr. G, Dr. P, and Dr. C constitute the great weight of the expert medical evidence in this case and should result in the reversal of the hearing officer's decision and the rendition of a new decision in the carrier's favor. The carrier further points out that Dr. B is not an ophthalmologist and asserts that the opinion of Dr. W is conclusory. However, the hearing officer made a specific factual finding that Dr. W's opinion on causation is credible and supported by the medical evidence. In her discussion of the evidence, the hearing officer states that although she found Dr. C's opinion credible to some degree, she gave greater weight to the opinion of Dr. W because he had examined the claimant. 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)). While we agree with the carrier that Dr. C's report contained more details on how keratoconus scars the cornea, we cannot say that the hearing officer's determination, relying on Dr. W's opinion, is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge