

APPEAL NO. 001436

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 31, 2000. The hearing officer determined that the compensable injury of _____, includes emotional disorders; that the appellant (carrier) did not waive the right to contest the compensability of the claimed injury by not contesting compensability within 60 days of being notified of the injury; and that, based on the report of the designated doctor, the respondent's (claimant) impairment rating (IR) is 15%, which includes an impairment for his mental disorders. The carrier requests our review of the extent-of-injury and IR determinations for evidentiary sufficiency, stressing that the evidence established that the claimant's emotional disorders were present prior to his work-related injury and thus were not attributable to that injury. The carrier further contends that because the compensable injury does not extend to the claimant's emotional disorders, the designated doctor's assignment of a 10% IR for the emotional disorders is against the great weight of the other medical evidence. The claimant responds that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The claimant testified that while performing concrete work for a construction company on _____, he heard a "pop" and injured his neck and right upper extremity pulling a "straight edge" across freshly poured concrete to level it; that he continued to work in pain from his neck down to his elbow until _____, when he quit due to increasing pain; that he has declined a recommendation for cervical spine surgery because he is fearful of it; and that the carrier disputes even his efforts to obtain conservative treatment. The claimant further stated that he is 38 years old and was formerly a very physically active man but now he can no longer do what he used to do and just sits around in pain and feels "useless."

The claimant further testified that in January 1997 he had a heated dispute with a sister over the contributions of his siblings for the care of his father who had Alzheimer's Disease and eventually died; that his sister called the police and had him arrested and taken to (the hospital); that he was kept overnight in a seclusion room for observation; and that he was not diagnosed with a psychiatric illness but was told to stop drinking alcohol and start attending Alcoholics Anonymous meetings. He said that while he has no medical training and does not understand the nature of his psychological problems, he does feel they were caused by his on-the-job injury and the effects that injury has had on his life.

Dr. M, a neurosurgeon who evaluated the claimant, reported on October 15, 1997, that an MRI showed disc herniations at C5-6 and C6-7. Dr. M's impression was mechanical neck pain secondary to degenerative cervical disc disease and right upper extremity symptomatology suggestive of a cervical radicular syndrome secondary to cervical disc herniation. Dr. M wrote on November 12, 1997, that the claimant would be a candidate for a two-level cervical discectomy and fusion.

Dr. I, claimant's treating doctor, reported on May 29, 1998, that it is very difficult for the claimant to make the decision to have the surgery and that in addition to persistent cervical pain, the claimant "started to develop strong somatic ideas of reference and fears of being disabled for the rest of his life"; that the claimant is facing significant, even permanent loss of functioning that requires major physical and psychological readjustment"; that claimant has chronic pain that has adversely affected his interpersonal relationships and interferes with his rehabilitation"; and that the claimant "continues to express unrealistic expectations regarding the outcome of medical treatment in relief of his symptomatology." Dr. I also stated that he was referring the claimant to Dr. C, a psychologist, for a chronic pain management program. Dr. I's subsequent reports reflect that the claimant's psychological condition continued to worsen and that the carrier would not authorize his participation in the pain management program. Dr. I wrote on January 25, 2000, that the claimant has developed a post-traumatic stress disorder secondary to his injury; that he was making good money and was very happy with his job before the injury; and that since his injury he has undergone significant lifestyle changes and that he needs psychological treatment.

In an extensive November 4, 1998, report of his testing and evaluating the claimant, Dr. C stated the diagnosis as adjustment reaction with anxiety and depressive features (chronic) and pain disorder associated with both psychological factors and a general medical condition including but not limited to neck, shoulder, arm, and wrist sprain, and cervical disk displacement. Dr. C further stated that the claimant has no history of psychological difficulty or excessive pain complaint or difficulty and that he has significant anxiety, depression, and somatic concern as a result of his work-related injury.

The carrier's Report of Medical Evaluation (TWCC-69) dated "8/24/99" states that the carrier disputes any psychological condition as being related to the compensable injury and that the claimant has preexisting drug and alcohol problems and has been treated at the hospital for this condition.

Dr. I's TWCC-69 dated "6/8/99," assigns claimant an IR of 22% under Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides).

The TWCC-69 of Dr. R, the designated doctor, dated "8/24/99," assigns the claimant an IR of 15%. In her accompanying narrative report, Dr. R states that she assigned six percent for the cervical spine injury and ten percent for the mental and behavioral disorders pursuant to Chapter 14, Table 1, Class 2, AMA Guides. Dr. R also noted that she attempted to obtain objective testing to more accurately determine the scope of the mental and behavioral disorders but that the carrier denied authorization for the testing. In a "letter of clarification" dated November 2, 1999, Dr. R wrote that in her opinion, the mental and behavioral disorder is a compensable part of the injury that occurred on _____, and she declined to change the IR. We note that the designated doctor's report is not entitled to presumptive weight on the question of whether the claimant's compensable injury included his psychological or emotional conditions. Texas Workers' Compensation Commission Appeal No. 950450, decided May 10, 1995.

The carrier introduced “peer review” reports from Dr. B (December 10, 1999) and Dr. S (January 20, 2000) both of whom opined that the claimant’s relatively minor strains should not be a basis for his multiple psychological problems.

The carrier did not contend that Dr. R misapplied the AMA Guides or that there was a failure of proof that the claimant’s psychological or emotional problems were permanent and thus ratable for impairment. The only basis advanced by the carrier for not giving presumptive weight to Dr. R’s report was the contention that the claimant’s compensable injury did not extend to his psychological conditions and, thus, that such conditions should not be rated for impairment.

Whether the claimant’s compensable injury of _____, extended to his emotional or psychological problems presented the hearing officer with a question of fact to resolve. 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 and we do not find them so in this case. 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 hearing officer could credit the opinions of Dr. I and Dr. R, both of whom examined the claimant.

The decision and order of the hearing officer are affirmed.

Philip F. O’Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge