

APPEAL NO. 001531

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was convened on March 31, 2000. At the request of the appellant (claimant), the hearing officer granted a continuance. A CCH was held on May 24, 2000. The claimant sustained a compensable right knee injury when she fell and broke her kneecap in _____. The hearing officer determined that the claimant's compensable injury does not extend to her psychological condition and that the carrier was not required to contest the contention that the compensable injury extended to her psychological condition. The claimant appealed, stated that the hearing officer did not discuss the medical evidence in his decision, contended that the medical evidence established that her compensable injury extends to her psychological condition, urged that the hearing officer erred in determining that the carrier did not have to contest the compensability of the claimed psychological condition injury, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in her favor on both issues. The respondent (carrier) replied, urged that the determinations of the hearing officer are supported by the evidence and the law, and requested that the decision of the hearing officer be affirmed.

DECISION

We affirm.

We first address the claimant's statement that the hearing officer did not mention medical reports in his statement of the evidence and discussion in his Decision and Order. In Texas Workers' Compensation Commission Appeal No. 94121, decided March 11, 1994, the Appeals Panel stated that Section 410.168(a) requires that hearing officers issue a written decision that includes findings of fact and conclusions of law, a determination of whether benefits are due, and an award of benefits due; but that the 1989 Act does not require a statement of the evidence and held that omitting a discussion of part of the evidence was not error. The hearing officer did not commit error in not mentioning reports of doctors. We again encourage hearing officers to include a statement of the evidence that fairly summarizes the evidence of both parties in the record.

We next address the hearing officer's determination that the carrier was not required to contest the compensability of the claimed psychological condition. In Texas Workers' Compensation Commission Appeal No. 000713, decided May 17, 2000, the Appeals Panel held that under the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)) effective March 13, 2000, a failure to dispute timely an extent of injury does not create liability for the claimed extent of injury on the part of the carrier and that Rule 124.3(c) applied to all CCHs convened on or after March 13, 2000. The CCH that is the subject of the appeal before us was convened on May 24, 2000, and the provisions of Rule 124.3(c) effective March 13, 2000, apply. In Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) forms dated March 6, 1997, and May 5, 1997, the carrier stated that the compensable injury is limited to the knee and no other injury naturally

resulted. The carrier contended that it first received notice of claimed depression in a medical report received on July 17, 1998. In a TWCC-21 dated September 8, 1998, the carrier specifically contested compensability of depression. If the carrier failed to contest the compensability of the claimed psychological condition within 60 days of receiving written notice of the claimed psychological condition, such failure did not result in the carrier becoming liable for that claimed condition.

We now address the sufficiency of the evidence to support the determination of the hearing officer that the claimant's compensable injury does not extend to her psychological condition. It is undisputed that the claimant has depression. The claimant contends that it is related to the compensable injury and the carrier contends that it is not. In a report dated July 7, 1998, Dr. F, a clinical psychologist with a Ph. D., stated that the claimant reported feelings of depression including crying easily, irritability, sadness, anhedonia, and hopelessness; that she reported periodic depression since a back injury in 1991; that current stressors include financial problems, her mother not being supportive or her upcoming wedding, and her fiancé's excessive alcohol use; that the claimant appears to be experiencing severe depression with a significant anxious component; that she seemed to be grieving over her health problems and seemed frightened by the deterioration of her health; and that she has a severe reactive depression with a significant anxiety component that appears to have resulted from her inability to work and ineffective coping with chronic pain and disability. At the request of the carrier, Dr. B, a psychiatrist, reviewed the records of the claimant. In a report dated December 23, 1998, Dr. B briefly summarized medical records; opined that there would be "no reasonable medically probable way to develop a severe mental illness" from the minor injury to the knee; that the claimant had a number of chronic problems that predated the _____ work-related injury; that psychological treatment would be reasonable and medically necessary as evidenced by the claimant's somatization and depressive symptoms; but that the psychiatric treatment should be sought outside of the workers' compensation system. In a letter dated January 13, 2000, Dr. K stated that the claimant had asked her to write a letter; that she had chronic pain from a fall at work; that altered gait caused her to develop back pain; that the pain problems have been quite debilitating; that it has been difficult for her to cope because of a combination of emotional and physical effects caused by the work injury; that he disagrees with the carrier's position; and that the claimant's pain and emotional symptoms are mutually aggravating each other.

The burden is on the claimant to prove the extent of an injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the fact finder judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the evidence. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286

(Tex. App.-Houston [14th Dist.] 1984, no writ). In a case such as the one before us where both parties presented evidence on the disputed issue, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. The determination of the hearing officer that the claimant's compensable injury does not extend to her psychological condition is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support that determination of the hearing officer, we will not substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge