

APPEAL NO. 001540

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 May 9, 2000, with the record closing on May 29, 2000. With regard to the sole issue before her, the hearing officer determined that the appellant's (claimant) diagnosis of "To and Fro Tremors" was not a result of the compensable injury of _____. The claimant appealed the adverse determination, contending it was contrary to the great weight and preponderance of the evidence. The respondent (carrier) questioned the timeliness of the claimant's appeal and replied that the decision was supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

We first address whether the claimant timely filed her appeal. Pursuant to Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §143.3(c) (Rule 143.3(c)), an appeal, to be timely, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision. The decision of the hearing officer was forwarded to the parties by cover letter dated June 16, 2000, and distributed. The claimant does not state in her appeal when she received the decision so the provisions of Rule 102.5(d) are applied which deem the receipt by the claimant to be five days after mailing unless the great weight of the evidence indicates otherwise.

In that the decision was distributed on June 16, 2000, the "deemed" date of receipt is June 21, 2000. If the deemed receipt date is June 21, 2000, fifteen days from that date would be July 6, 2000. The claimant's appeal is postmarked July 5, 2000, and was received on July 10, 2000. The claimant's appeal was timely filed.

The claimant testified she has been receiving treatment for carpal tunnel syndrome, tendinitis, headaches and tremors which included surgery on her left elbow and both wrists. Dr. T was the surgeon. The claimant stated that five days after her surgery on April 13, 1999, she began having tremors in her hands and arms which she contended were caused by complications in administering the anesthesia and having a stroke during the operation. The claimant asserted she was told by Dr. W that she had an anesthetic accident during the procedure and denied that she was the one who made this assertion to Dr. W.

Dr. J testified that he was the anesthesiologist for the claimant's surgery on April 13, 1999, and he denied that the claimant had any kind of anesthetic accident, stroke or adverse reaction to the anesthesia during or after the procedure. He denied that anything happened during the surgery or the post-recovery stage that would suggest that anything unusual might have caused her to subsequently have tremors. He noted that during recovery the claimant complained of chest pains, but testing indicated no evidence of claimant having a cardiac problem. She was kept overnight for observation solely for this

reason and not for a delay in recovering from the anesthetic. He testified that the claimant woke up within the expected amount of time. Claimant was released to go home the next day. According to Dr. J, the claimant's MRI taken on July 17, 1999, demonstrated no problem associated with tremors.

Dr. W testified that he was board certified as a neurologist and he examined the claimant on February 15, 2000. He testified that the claimant had Parkinson-like symptoms called "to and fro tremors" and that he thought the claimant had an untoward reaction during anesthesia with either hypoxia or excess anesthetic medication which had caused damage to the basal ganglia of the brain which in turn produced the tremors. Dr. W based this opinion on an MRI of the claimant's brain taken on July 17, 1999. He reported that he did not have the operative report, nursing records or anesthesia records from the surgery, nor did he have any postoperative notes; that he relied on the claimant's history that she had an anesthetic incident during the surgery. He testified people do develop Parkinson's syndrome on their own without any kind of event, but he felt that since the claimant had denied having problems prior to the surgery, it was unlikely that the disease had developed on its own. He admitted that the abnormal MRI could also be suggestive of early multiple sclerosis (MS), but opined that MS patients do not develop resting tremors. They have a cerebellar type of tremor as a rule.

The claimant offered documentary evidence from Dr. W which was admitted and supported his testimony at the CCH. Medical records from Dr. L, a chiropractor, were admitted to reflect that he examined the claimant as the designated doctor to determine her impairment rating. His narrative dated December 5, 1999, reflects that the claimant also told him that she had problems coming out of the anesthesia and that she had shaking since the surgery which she denied having prior to surgery. He wrote, "she says no one has been able to explain the reason for the tremors to her, and that no one has given her any treatment options." Nonetheless, he wrote that the tremors appeared to be the consequence of a surgical procedure that was attempting to resolve symptoms the claimant was suffering as a result of her work injury.

The operative report from Dr. T dated April 13, 1999, reflects that "patient withstood the procedure well.... Patient was sent to the post anesthesia care unit in stable condition." A postoperative report dated April 19, 1999, reflects that the claimant had some delay in recovering from the anesthetic so she was kept overnight as a precaution and that she was having shortness of breath. Dr. T noted that the claimant had a history of cardiac arrhythmia. On June 25, 1999, the claimant presented to Dr. T for complaints of tremors in both upper extremities. He noted that the claimant was taking replacement thyroid medication and saw a doctor who prescribed the medication about two months before she came to him and "it has been since then that she has noticed the onset of tremor."

The claimant was examined by Dr. H, chiropractor, on October 5, 1999, who reported that the claimant told him that she had problems coming out from the anesthesia and a nurse had told her that her tremors were a consequence of the surgery. He did not have a surgical record to review. He noted an MRI performed on July 17, 1999, was

abnormal but no further investigation into this area had been performed. His clinical impression was that she had a resting tremor as a postsurgical complication. The MRI performed on July 17, 1999, was interpreted by the radiologist, Dr. Sh as abnormal in the left periatlial and right frontal white matter. He wrote that the etiology was unknown and could represent ischemic lesions or demyelinating foci.

Dr. C, a neurologist, by letter dated June 28, 1999, stated that he had examined the claimant and opined that she had a nonphysiologic tremor and should be given a psychiatric evaluation.

The claimant was examined by Dr. B on July 15, 1999, whose report reflects that during the examination he noted many inconsistencies in the manifestation of the tremor and in the claimant's coordination and handwriting. Dr. B requested Dr. St to also examine the claimant and Dr. B wrote that they both concurred that there was no apparent underlying neurologic explanation for the type of tremor displayed by the claimant.

The claimant had the burden to prove by a preponderance of the evidence that the tremors were caused by the _____, injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). This question of the cause of the tremors had to be proved by expert evidence to a reasonable 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 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. 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 issues, 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. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. 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 the determinations of the hearing officer, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge