

APPEAL NO. 001608

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 June 21, 2000. With regard to the issues before her, the hearing officer determined that the compensable (needle stick) injury "does not extend to or include the essential tremor"; and that the appellant (claimant) did not have disability from June 10, 1999 (all dates are 1999 unless otherwise noted), to the CCH as a result of the compensable injury. The claimant appealed, arguing the effects of certain drugs, that the Texas Workers' Compensation Commission (Commission)-appointed doctor's report had "inaccuracies" and should not be considered, and that the claimant's doctors "should have more weight given to their reports." The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (self-insured) urges affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant was employed by the self-insured as a respiratory therapist and received a needle stick injury on _____ while working with an HIV-positive patient. The parties stipulated that the claimant sustained a compensable needle stick on _____. The claimant immediately reported his injury and was started on a triple antiviral cocktail of medication the same day. The claimant testified that he began to have tremors on Saturday, June 12, which got worse the following few days. The claimant has apparently not worked since June 10. One of the medical records notes that prior to _____ the claimant suffered from "multiple medical conditions," which included fibromyalgia, Raynaud's Disease, arthritis, asthma, "chronic allergy symptoms with sinus disease" and lower back pain. Another report commented that the claimant "provided a list of too numerous to count medications to which he has allergies or bad side effects from. These seemingly include at least 30 different medications." The issue in this case is whether the triple antiviral cocktail of medication caused the complained-of tremors and whether the compensable injury caused the claimant to have disability as defined in Section 401.011(16) (the inability to obtain and retain employment at the preinjury wage because of the compensable injury).

The claimant saw a number of doctors, including Dr. W, the claimant's treating doctor. A progress note dated June 17 from Dr. W noted that the claimant was "now on triple HIV prophylactics x 4 weeks. Feels bad poor tolerance. Agree with no work x one month." While a number of complaints are noted, there is no mention of tremors. A note of June 30 says that the claimant "[s]till feels lousy, tired" and lists the medications the claimant is taking. The claimant was noted as looking better on July 9 after he was "off triple treatment" and was returned to work July 13. Another progress note dated July 26, from Dr. W, imposes a 10-pound lifting restriction due to the claimant's unrelated low back pain and herniated disc. A note dated August 5 states "[c]omplains of tremor since on triple antibiotics. Reviewed PDR [Physician's Desk Reference], Triexivan [one of the

antiviral drugs the claimant was taking] does list tremor." Dr. W's assessment was: "Tremor, possibly medication related. Triexivan or Eпивir or Retrovir." A note dated August 23 comments that the tremor seems slightly better but that Dr. W does not think the claimant "can work as respiratory tech anymore because of tremor, fibromyalgia, carpal tunnel syndrome, degenerative joint disease of C and L spine, etc." In a report dated October 1, Dr. W comments that he has been treating the claimant "for approximately four years now," comments regarding the claimant's degenerative disc disease and the needle stick injury, and concludes that the claimant:

subsequently had to go on triple HIV prophylactic medications. This caused malaise, nausea, and anorexia, and fatigue, and [claimant] missed work from that point onward. Finally, it seems that a tremor, which had been perhaps mild, prior to this, became very exacerbated by the medications and this tremor has also led to inability to return to work.

Dr. W stated that the claimant could not "return to work for the foreseeable future." The claimant was examined by Dr. Z, a carrier-required medical examination (RME) doctor, who, in a report dated September 23, seemed to think that "[s]tress or other factors can be implicated in the onset of an essential tremor" and that the essential tremor may have been brought on by the stress of the needle stick. Dr. W referred the claimant to Dr. B, who referenced Dr. Z's September 22 examination, but stated that the report was not yet available. Dr. B found persistent mild to moderate essential tremors and suggested an MRI of the brain, which was performed and assessed as normal. In a report dated January 13, 2000, Dr. Z wrote that the claimant had been in that day, the essential tremor was worse, and that the claimant is quite anxious. Dr. Z examined the claimant and concluded:

The patient's tremor is unequivocally an essential tremor and was triggered, exacerbated, and associated with his current problem, i.e. his situation in which he developed the tremor shortly after the institution of triple therapy for his current needle stick from an HIV patient.

The Commission appointed Dr. D as its RME doctor. In a report dated February 9, 2000, Dr. D recited the claimant's history, reviewed Dr. W's records, referenced Dr. Z's September 23 report (but not his later January 2000 report), and commented:

As best as I can tell from the literature, as well as the PDR, the three antiviral agents utilized for one month are not known to cause tremors, and even if a tremor did occur, it surely should have resolved by this time if it was were [sic] drug-induced. . . . Of significant note is that this patient has been on a multitude of medicines, several of which are known in themselves to contribute to, exacerbate, or cause tremors. Paxil, trazodone, Combivent, Atrovent. Vanceril. Indeed, based on the patient's history alone, the tremors are temporally related to his antiviral treatment. However, this does not mean that the antiviral treatment is causative. Some aspects of the tremor and gait suggest a non-organic etiology. He has features of a mild peripheral

neuropathy on examination, and apparently, this has been confirmed by electrical studies done by [Dr. B]. It is unclear if the etiology of this neuropathy has been evaluated, but this is not contributing to tremors and/or gait problem. [Emphasis in the original.]

Dr. D recommended thyroid studies (which were apparently done with negative results) and, "as a purist," would have liked to have observed the claimant "off all the tremor-producing medicines," but conceded that would not be practical in light of the claimant's other problems.

The hearing officer, in the Statement of the Evidence, reviewed the reports of Dr. W and Dr. D, and Dr. Z's January 2000 report. The hearing officer commented that she gave greater weight to the report of Dr. D "who consulted multiple medical references." The claimant's appeal discusses the various medications involved (and to that extent offers new information not given at the CCH) and, in essence, disagrees with Dr. D's assessment whether certain medications can or cannot cause tremors. The claimant concludes that "[d]ue to the conflicting information and inaccuracies brought out [in Dr. D's report] I contend that [Dr. D's] report is neither credible nor persuasive and should not be considered in deciding my case."

A condition caused by medical treatment for a compensable injury may become part of the compensable injury. Maryland Casualty Company v. Sosa, 425 S.W.2d 871 (Tex. Civ. App.-San Antonio 1968, writ ref'd n.r.e. *per curiam* 432 S.W.2d 515). This doctrine applies to the aggravation of a preexisting condition by medical treatment for the compensable injury. Texas Employers' Indemnity Company v. Etie, 754 S.W. 2d 806 (Tex. App.-Houston [1st Dist.] 1988, no writ). The Appeals Panel applied this doctrine in affirming a hearing officer who found that the claimant's diabetes was compensable when it was aggravated by steroid treatment for his compensable injury. Texas Workers' Compensation Commission Appeal No. 951290, decided September 18, 1995. The key question in the current case is whether the triple antiviral medication given for the compensable needle stick caused the tremors or whether other conditions and medication caused the tremors. The claimant had the burden to prove by a preponderance of the evidence that the medication and/or stress caused by the compensable needle stick caused the tremors and, in a case such as this, expert medical evidence would be required.

Fairly clearly, there was conflicting expert medical evidence in the record, especially between Dr. Z's January 2000 report and Dr. D's report. The 1989 Act, in Section 410.165(a), provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). 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). The hearing

officer heard the evidence, reviewed the reports, and gave greater weight to Dr. D's report than reports to the contrary which was within the hearing officer's prerogative. 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 for that of the hearing officer. Consequently, we affirm the hearing officer's decision on the extent-of-injury issue.

On the disability issue, the hearing officer found that the claimant did not have disability "as a result of the compensable [needle stick] injury." It is undisputed that Dr. W took the claimant off work for four weeks to administer the triple antiviral medication. The self-insured, in a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated July 19, and verbally at the CCH, recited that it had paid temporary income benefits from June 15 to July 13, when the claimant was released back to work. Consequently, as a minimum, the claimant had disability, as defined in Section 401.011(16), for that period. Whether the claimant has had disability after that date is another matter. Dr. W, in several of his reports, indicates that the claimant has continued disability but links that to the tremors or to other conditions not at issue here. We believe the hearing officer meant to indicate that the claimant did not have disability after July 13 because she found the tremors not compensable; however, the decision states that the claimant had no disability "from June 10, 1999 through the present," an obviously incorrect statement. Consequently, we reverse the hearing officer's decision on disability and render a new decision that the claimant had disability from June 10 through July 13 as a result of the compensable needle stick injury.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge