

## APPEAL NO. 001658

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 June 1, 2000. The appellant (claimant) sustained a compensable low back injury on \_\_\_\_\_. The hearing officer determined that the claimant's depression is not part of the compensable injury. The claimant appealed, stated why he thought the evidence established that depression is part of his compensable injury, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that depression is part of his compensable injury. A response from the respondent (self-insured) has not been received.

### DECISION

We affirm.

The claimant injured his low back lifting a heavy box of tile on \_\_\_\_\_. After being treated by two doctors, Dr. W began treating the claimant on November 9, 1998, and diagnosed a disc disorder without myelopathy. On December 1, 1998, Dr. W also diagnosed "psych/behavioral factors affecting medical condition injury related." Dr. WB; the Texas Workers' Compensation Commission-selected designated doctor, whose opinion on extent of injury is not entitled to presumptive weight; opined that the claimant does not have depression as a result of the compensable injury, and that if he did, the depression is not such that it should be rated under the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. Dr. WB was provided a letter from Dr. W in which he stated his disagreement with Dr. WB's report. In April 1999 Dr. WB responded, stating that he did not change his mind. In a report dated January 25, 2000, Dr. W stated that the claimant was adequately adjusted at the time of the injury; that because of constant and chronic pain, the claimant became concerned and started to worry about his loss of physical capacity; that the claimant began to experience uncharacteristic bouts of sadness and crying spells and became irritable and upset; and that it remained his professional opinion that the compensable injury brought about the claimant's current psychological condition. Dr. AB, a psychiatrist and neurologist, performed a psychological evaluation and reviewed medical records, including those of Dr. W and Dr. WB. In a letter to the self-insured dated May 12, 2000, Dr. AB said that the claimant had a severe depressive disorder and opined that these severe psychiatric symptoms could not be caused by a low back strain type of injury.

The burden is on the claimant to prove by a preponderance of the evidence 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 finder of fact 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 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). An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence would 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). The hearing officer's determination that the claimant's depression is not a part of the compensable injury 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, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determination of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Alan C. Ernst  
Appeals Judge

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Robert W. Potts  
Appeals Judge