

APPEAL NO. 001847

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 July 12, 2000. The hearing officer determined that the appellant/cross-respondent's (claimant) compensable injury includes psychological problems (including depression) but does not include an injury to the left wrist and that the claimant is not entitled to supplemental income benefits (SIBs) for the first compensable quarter. The claimant appealed, urged that the evidence established that her compensable injury includes an injury to her left wrist and that she had no ability to work during the qualifying period, and requested that the Appeals Panel reverse the decision of the hearing officer concerning injury to her left wrist and entitlement to SIBs and render a decision in her favor on those issues. The respondent/cross-appellant (self-insured) filed a document that is a timely request for review and a response to the claimant's appeal. The self-insured appealed the determinations that the claimant's unemployment during the qualifying period was a direct result of the claimant's impairment from the compensable injury and that the claimant's injury extends to psychological problems (including depression), urged that the evidence is not sufficient to support those determinations, and requested that the Appeals Panel reverse those determinations and render determinations in its favor on them. The self-insured requested that the Appeals Panel affirm the determinations that the claimant is not entitled to SIBs and that the compensable injury does not extend to the claimant's left wrist, contending that the evidence is sufficient to support those determinations. A response from the claimant to the self-insured's cross-appeal has not been received.

DECISION

We affirm.

The claimant testified that on _____, she tripped on a telephone cord; that she tried to break her fall, hit her left thumb on the edge of a table, and fell to the floor, landing on her left side; that her left knee immediately became swollen; that she was taken to an emergency room (ER); that she told the doctor in the ER about her left knee, hip, and wrist; and that the doctor told her that he would take care of her knee and hip first, that her wrist was not broken, and that the wrist would be taken care of later. She said that she went to Dr. P, that she received therapy on her wrist, that the therapy helped while it was being done, but that she did not obtain lasting relief from the therapy. The claimant stated that her pain did not go away; that she worried about the pain and not being able to work; that she would start crying; that Dr. P referred her to Dr. D, a psychiatrist; that the psychiatrist asked her questions to find out what was going on in her mind; and that she did not recall saying some of the things that are in the report of Dr. D.

An Initial Medical Report (TWCC-61) dated _____, states that the claimant tripped, struck her left elbow on a table, and hit her left knee and hip on the floor; indicates that x-rays were taken of the claimant's left knee, hip, and elbow; and does not include mention of the claimant's left wrist. A medical report dated March 7, 1996, mentions the

claimant's left knee, left hip, left elbow, and low back, but does not contain a reference to the claimant's left wrist. An office visit note from Dr. P dated March 18, 1996, states that there is a new issue of pain in the left thumb and that the claimant has some numbness in the tip of the left index finger and some nocturnal pain in the wrist and hand. In a report dated May 8, 1996, Dr. K recorded the results of his examination of the claimant, stated that he saw no evidence of carpal tunnel syndrome (CTS), and reported that she was cleared to return to work with her only restrictions being to take frequent breaks and to stretch her back and left thigh. The claimant had arthroscopic surgery on her left knee on June 21, 1996; was returned to full duty in April 1997; and was taken off work in October 1997 because of knee pain. A report from Dr. M dated March 27, 1998, states that the claimant possibly has left CTS and a report from him dated July 2, 1999, states that the claimant has left CTS. Work status notes indicate that the claimant is unable to return to work at the time and some reports state that the claimant is totally disabled and others state that she still requires an off-work status.

A psychiatric record dated October 13, 1997, states that the claimant complained of feeling fearful a lot on her job, that she was having major job problems, that she felt that it was getting out of hand, that on Sundays she felt sick about going to work, that she felt that way for the past year, that problems got worse this school year, and that she was at the point where she hates to go to work. Progress notes indicate that she was afraid to say anything to the principal and that the principal was her major problem. A note dated March 10, 1998, states "obsessing about her job; bored during the day; concerned about her job future b/c of injuries she received on the job; feeling insecure and low self-worth." Another note dated April 7, 1998, states that the claimant has obsessive thoughts about her job; feels the principal is responsible for what has happened to her; and appears tense, sad, and depressed. Other progress notes indicate that the claimant was concerned about her husband when he passed blood in his urine in 1997; that she had a confrontation with the principal in November 1998; that she had chest pain; that she went to an ER, was hospitalized for 19 days, was fearful of dying, and was diagnosed with anxiety; and that she was prescribed Prozac. In a letter dated May 23, 2000, Dr. D wrote:

The compensable injury (March 1996[)] produced pain which caused [claimant] not to be able to be the person she was before the injury. This produced a fear trauma, and isolation with accompanying worry and an inability to stop, chest tightness (pain) and irritability. As the condition progressed she developed sadness, fatigue, severe memory and concentration impairment, mental confusion, with auditory and visual hallucinations and finally suicidal ideation's [sic] and thoughts.

The specific reason [claimant] cannot work is, [sic] suspiciousness, severe memory and concentration impairment, and mental confusion.

* * * * *

It is my professional opinion that the compensable injury of March 05, 1996 caused of [sic] exacerbated the anxiety and depression with psychotic features that exist with [claimant]. This opinion is based on the history and the DAM IV.

We first address the determinations concerning the extent of the claimant's injury. 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, 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 evidence of the extent of the claimant's compensable injury is conflicting and subject to different interpretations. That different factual determinations could have been made based upon the same evidence is not a sufficient basis to overturn factual determinations of a hearing officer. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. Only were we to conclude, which we do not in this case, that the hearing officer's determinations concerning the extent of the compensable injury are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust, would there be a sound basis to disturb those determinations. 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 those determinations of the hearing officer, we will not substitute our judgment for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We next address the determination that during the qualifying period the claimant's unemployment was a direct result of her impairment from the compensable injury. We have affirmed the determination that the claimant's compensable injury extends to her psychological condition. Dr. D assigned a 15% impairment for the claimant's psychological condition and stated why she could not work because of it. The Appeals Panel has held that evidence that shows that a claimant has suffered a serious injury with lasting effects and that the claimant could not reasonably perform the type of work she was doing at the time of the injury is sufficient to support a determination that the claimant's unemployment was a direct result of the impairment from the compensable injury. Texas Workers' Compensation Commission Appeal No. 93559, decided August 20, 1993. While it would have been better had the hearing officer made an additional finding of fact on the ability of the claimant to successfully perform the work she was doing when she was injured based on the holding in Appeal No. 93559, his determination that the claimant did not

return to work as a direct result of her impairment is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and is affirmed.

We next address the findings of fact that the claimant failed to prove by a preponderance of the credible evidence that she had a “total inability to work” during the qualifying period and that she had some ability to work. Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) addresses meeting the good faith requirement for entitlement to SIBs with no ability to work and provides that:

[a]n injured employee has made a good effort to obtain employment commensurate with the employee's ability to work if the employee:

* * * *

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

Many of the medical records simply state that the claimant is unable to return to work, is totally disabled, or requires an off-work status without a narrative which specifically explains how the injury causes a total inability to work. The May 23, 2000, letter from Dr. D states that the specific reason the claimant cannot work is suspiciousness, severe memory and concentration impairment, and mental confusion. Immediately after making the finding of fact that the claimant’s compensable injury extends to her psychological condition, the hearing officer made the findings of fact concerning the claimant’s ability to work. It appears that he did not conclude that the letter of Dr. D and his medical reports were sufficient to meet the requirements of Rule 130.102(d)(4). His determinations concerning the claimant’s ability to work are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust and are affirmed.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge