APPEAL NO. 001936

On August 2, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) left eye embolism is a naturally flowing injury from his compensable injury of _____. The appellant (self-insured) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. The claimant requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury to his low back on _____. The claimant's treating doctor, Dr. C, noted in September 1998 that the claimant's left eye had been blurring for two days and referred the claimant to Dr. B, an ophthalmologist. Dr. B saw the claimant in September 1998 and diagnosed the claimant as having acute iritis of the left eye secondary to herpes zoster. The claimant said that Dr. B treated him with medication and that the treatment took care of the blurring of his left eye.

It is undisputed that as a result of his compensable low back injury, the claimant underwent lumbar surgery on December 22, 1998, which was performed by Dr. BE. The surgery consisted of decompressive laminectomy with medial facetectomies and foraminotomies at L3, L4, and L5.

The claimant testified that the day after his back surgery, his left eye was hurting and was totally blurred. Dr. C referred the claimant back to Dr. B who, on December 29, 1998, diagnosed the claimant as having a branch retinal vein occlusion of the left eye and noted that the herpes zoster iritis of the left eye was quiet at that time. Dr. B noted that the claimant would have a consult with Dr. R, an ophthalmologist associated with Dr. B.

On January 20, 1999, Dr. R diagnosed the claimant as having a branch retinal artery occlusion of the left eye - embolic.

On February 1, 1999, the claimant underwent a carotid doppler study and the radiologist reported that atherosclerotic plaque was seen throughout both the right and left carotid artery systems and that the study suggested a 60 to 79% stenosis in both the right and left internal carotid artery.

Dr. C referred the claimant to Dr. S, a vascular surgeon. On February 24, 1999, Dr. S performed a left carotid endarterectomy with in situ external carotid angioplasty reconstruction on the claimant, and Dr. S's preoperative and postoperative diagnoses regarding the left carotid artery was a 60% left internal carotid stenosis with marked ulceration, consistent with source for retinal embolus, and a left retinal branch artery embolization.

Dr. BE wrote in November 1999 that the claimant's visual loss is unrelated to the back surgery.

Dr. R wrote in July 1999 that he feels that the cause of the claimant's embolic event in the left eye is associated with the claimant's back surgery. Dr. R wrote that the timing of the visual field defect that the claimant noticed is suggestive of this and that there are multiple factors associated with surgery that could have caused the embolic event to have occurred at the time of the back surgery. Dr. R wrote in December 1999 that "in reasonable medical probability the onset of the visual field defect being concurrent with the time of the back surgery would dictate that his back surgery was the cause of his decreased vision."

Dr. W, a thoracic and cardiovascular surgeon, testified that he reviewed the claimant's medical records at the self-insured's request and that, in reasonable medical probability, the claimant's back surgery did not cause or contribute to the claimant's left eye retinal embolus. Dr. W testified that within reasonable medical probability the claimant had carotid stenosis with an ulceration prior to his December 1998 back surgery. Dr. W said that for an embolus to be carried to the retinal artery, the location of the plaque would be either in the aorta, right after the blood comes out of the heart, or in the carotid artery, because the retina is downstream from those areas and plaque travels downstream. Dr. W said that plaque from a cut or clamped vessel in the back would not travel to the eye because that is not the direction the blood flows.

In Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524, 526 (Tex. 1975), the court noted that the site of the trauma and its immediate effects are not necessarily determinative of the nature and extent of the compensable injury and that the full consequences of the original injury, together with the effects of its treatment, upon the general health and body of the worker are to be considered. The claimant had the burden of proof on the disputed issue. The hearing officer found that, in all medical probability, the claimant's back surgery caused the claimant's decreased vision, which was diagnosed as a left eye retinal branch embolus, and he concluded that the claimant's left eye embolism is a naturally flowing injury from his compensable injury of _____.

The hearing officer makes clear in his decision that he found the opinion of Dr. R persuasive and that he did not find the opinions of other doctors persuasive. The self-insured contends that the hearing officer's finding and conclusion are not supported by the evidence and that the hearing officer should not have afforded the opinion of Dr. R greater weight than the opinions of the other doctors.

The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence. As an appellate tribunal, the Appeals Panel is not a fact finder and 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. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the

evidence as to be clearly wrong and unjust. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Kathleen C. Decker
Appeals Judge