APPEAL NO. 002167

A contested case hearing was held on August 23, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), with the hearing officer to resolve the sole disputed issue considered at the benefit review conference (BRC), to wit: Is the appellant (claimant) entitled to lifetime income benefits (LIBs) based on an injury to the skull that resulted in incurable imbecility. The hearing officer concluded that the claimant is not entitled to LIBs based on an injury to the skull that allegedly resulted in incurable imbecility. The claimant has appealed, asserting that certain medical records of four doctors constitute the great weight of the evidence to establish that he sustained an injury to the skull resulting in incurable imbecility and is thus entitled to LIBs. The respondent (carrier) counters in its response that certain medical records of other doctors are sufficient to support the hearing officer's determination. The claimant also asserts that the hearing officer erred in excluding one of the claimant's medical reports for untimely exchange while the carrier asserts the contrary.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained an injury to the skull and that Dr. U was appointed by the Texas Workers' Compensation Commission to perform a medical examination and to offer an opinion on the disputed issue in this matter.

The claimant's wife of 45 years testified that she has a home health care aide look after the claimant at home for eight hours a day when she is at work because he is subject to having seizures and needs assistance with activities of daily living. She said she accompanied the claimant to doctors' appointments and likened her role to that of a mother taking care of a baby. She also stated that she answered the carrier's interrogatories to the claimant for him and, concerning a question about his education level, said that she understood he had completed the fourth grade in school.

The hearing officer first discusses the problem with the lack of a medical definition of imbecility, as noted by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 961340, decided August 21, 1996. He then sets out in some detail the medical opinions of Dr. LP, Dr. S, Dr. D, Dr. H, and Dr. U concerning the claimant's mental status and imbecility. Given the extensive recitation of the evidence in the hearing officer's decision, with which neither party takes issue, it is not necessary to again set out all of that evidence in this opinion.

The December 13, 1991, report of Dr. Z neuropsychological evaluation of the claimant reflected that Dr. Z administered numerous tests to the claimant. Dr. Z noted inconsistent motivation during the testing and found that the claimant's IQ was borderline and generally low "but possibly consistent with his premorbid level of functioning." Dr. MP, a physical medicine specialist, reported on January 14, 1994, to the carrier that Dr. Z's

objective neuropsychological testing showed the claimant "at an IQ and functional level clearly above that of an imbecile." The transcript of the claimant's recorded interview on April 30, 1992, reflected that he provided the interviewer with his social security number, birth date, number of children and grandchildren, a description of the accident at work, and his work history, among other things.

We find no error in the hearing officer's reliance on the reports of Dr. D and Dr. U, despite the carrier's complaint that the hearing officer inferred an opinion from Dr. U's report because the latter did not come right out and state an opinion that the claimant is not an incurable imbecile. Dr. U, who is board certified in psychiatry and neurology, indicates in his February 1, 2000, report that he regards the claimant's significant impairment as more in the category of depression and noted that he did not feel that the claimant is really giving maximum effort during testing in evaluating his mental status. Dr. U also stated that based on his responses the claimant "does not appear to be confused or get things mixed up when basic commands were given."

Dr. D's January 1994 report reflects that the claimant's performance improved after about two hours of testing. Dr. D stated that he felt it logical to assume that the claimant's doctors may have said the claimant meets the qualifications for imbecility based on his presentation for the first two hours of evaluation and that the claimant's performance "improved dramatically by the end of the evaluation."

The hearing officer found that as a result of the injury to his skull, the claimant suffers from mental deficits, memory problems, and confusion; that although the claimant has decreased mental functions as a result of his skull injury and the resulting trauma to the brain, he functions at the second or third grade level on psychological testing; and that his mental status is above that of an imbecile. Suffice to say that while the hearing officer recognized the medical evidence and opinions supportive of the claimant's contention, he clearly found the evidence from Dr. D and Dr. U more persuasive. That was his prerogative given that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a).

The carrier's objection to the admission into evidence of Dr. H's August 7, 2000, report was sustained by the hearing officer and the claimant asserts error in that ruling. The claimant does not contend that the report was forwarded to the carrier within 15 days of the BRC. Rather, he contends that he could not have procured the report, forwarded to the carrier by fax on August 15, 2000, any earlier because his appointment with Dr. H, originally scheduled for a date prior to the last BRC on July 6, 2000, was rescheduled to August 7, 2000. The claimant did concede that, aside from a direct opinion on his imbecility, much of the information in the report was in prior reports. We review the evidentiary rulings of hearing officers for abuse of discretion and find none in this instance. *See* Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge