

APPEAL NO. 002248

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On September 29, 2000, a hearing was held. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) intermittent irregular heartbeat (arrhythmia) and hypertension do not result from the compensable injury of _____; that the claimant has not had disability; and that the respondent (self-insured) timely disputed the compensability of the claimed arrhythmia and hypertension. The claimant appealed. The self-insured responded.

DECISION

Affirmed.

The claimant testified that he was performing his job duties as a console machine operator on _____, when he touched a button on the machine with his left hand while his right hand was on a piece of metal and he received an electrical shock that went from his left hand through his body to his right hand. The parties stipulated that on _____, the claimant sustained a compensable injury involving, at least, his hands. The claimant said that prior to _____, he had mild hypertension but no heart problems. The claimant said that as a result of the electrical shock on _____, his hypertension got worse and he has an irregular heartbeat. The claimant said that his job as a console operator was light-duty work. The claimant said that he has been unable to work because of his injury.

Dr. B wrote in March 2000 that he saw the claimant on _____, several hours after the claimant's electrical shock; that the claimant had mild high blood pressure before the shock which became more severe after the shock; and that after the shock the claimant developed an intermittent irregular heartbeat that may be related to the shock.

Dr. R examined the claimant at the request of the Texas Workers' Compensation Commission (Commission) on May 2, 2000, and reported that the claimant's hypertension is unrelated to his work injury, and that an electrical shock can be a cause of damage to the heart. Dr. R also wrote that in her opinion, the electrical shock is probably causally related to the claimant's "current complaints." In a follow-up letter, Dr. R wrote that the claimant's palpitation symptoms could be related to the shock, that the claimant is not disabled, that the claimant is able to carry out his activities of daily living, and that the claimant could engage in light or medium work.

The claimant was also examined by Dr. A at the Commission's request and Dr. A reported in July 2000 that the claimant told him that Dr. N, a cardiologist, told the claimant that Dr. N did not know whether the claimant's palpitations were related to his electrical shock or not and that there was no way to prove whether they were or were not.

The claimant had the burden to prove the extent of his compensable injury and that he had disability. The hearing officer was presented with conflicting evidence. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer found that the claimant's hypertension was not worsened or otherwise aggravated by the incident of May 18, 1998; that any arrhythmia which the claimant may have sustained was not caused by the compensable injury of _____; and that the claimant had not been rendered unable to perform his usual duties by the claimed injury. The hearing officer concluded that the claimant's intermittent irregular heartbeat (arrhythmia) and hypertension did not result from the compensable injury of _____, and that the claimant has not had disability. We conclude that the hearing officer's determinations on the issues of extent of injury and disability are supported by sufficient evidence and that they are not 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 (Tex. 1986).

The hearing officer found that the date on which the self-insured first received a request for treatment for the "claimed conditions" had not been established and concluded that the self-insured timely disputed the compensability of the claimed arrhythmia and hypertension. The claimant states in his appeal that the self-insured "received notice," without stating when, and that the self-insured "failed to dispute timely." We note that there would be no waiver by the self-insured with regard to extent of injury. Texas Workers' Compensation Commission Appeal No. 000748, decided May 25, 2000; Texas Workers' Compensation Commission Appeal No. 001107, decided June 30, 2000.

Documents attached to the claimant's appeal that were not made a part of the hearing record are not considered on appeal. Texas Workers' Compensation Commission Appeal No. 92092, decided April 27, 1992. While the claimant states that those documents are new evidence, we observe that those documents do not meet the criteria for newly discovered evidence. Jackson v. Van Winkle, 660 S.W.2d 807 (Tex. 1983).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge