

## APPEAL NO. 002275

Following a contested case hearing held on September 8, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by concluding that the compensable injury sustained on \_\_\_\_\_, was not a producing cause of the appellant's (claimant) psychological problems, and that because the compensable injury was not a producing cause of her psychological problems, the claimant does not have disability. The claimant requests our review of these conclusions and two underlying factual findings for the sufficiency of the evidence to support them. The respondent (carrier) urges in response that the evidence is sufficient and that the decision should be affirmed.

### DECISION

Affirmed.

The parties stipulated that on \_\_\_\_\_, the claimant sustained a compensable injury to her teeth. The claimant testified that on that date, while working as a waitress in a restaurant and gift store, she was drinking water from a glass and that one of the coworkers to whom she was talking gestured with his hand and struck the glass, knocking her two top front teeth loose. She said she continued working, ate soft food, and was able to get an appointment about two weeks later with Dr. HC, a dentist; that over time Dr. HC made a mold of her loose teeth, extracted them, and replaced them with a "flipper"; that she had to wear the flipper in her mouth at work and found it uncomfortable and embarrassing; and that she could not bear to even look at herself in the mirror. The claimant indicated that she missed four or five days of work in December 1998 when her teeth were extracted and that she returned to work with the flipper which made her feel self-conscious because it affected her ability to smile at her customers. She could not recall the precise dates she missed work in December and said that sometime in January 1999 she stopped working, apparently because of gossip about her, because of feeling that management was trying to run her off, and because on the morning she left the job, customers were not being seated in her section. The claimant indicated that the later dental restoration work, a six-teeth bridge, left her without a gap between her two front teeth, a physiological characteristic she and her twin sister inherited from her father, and that this has upset her and she has had a hard time coping with it. She also said the bridge is heavy, large, and uncomfortable and has left her with a speech defect.

The claimant further testified that she began treating with Dr. W, a psychiatrist, in May 1999, and that he has diagnosed her with post-traumatic stress disorder (PTSD), depression, and panic disorder, all of which he relates to her physical, work-related injury. She also stated that in 1991 and again in 1992 she received psychological treatment for problems associated with her boyfriend's having improperly touched her young daughter and with her mother's death.

According to the claimant's records, she changed dentists in early February from Dr. HC to Dr. A. Dr. A's records contain a note dated February 24, 1999, stating that in his opinion, the claimant is ready to work and that work "would be good therapy for what seems to be a phobia surrounding the loss of her front teeth." The claimant signed a statement on February 25, 1999, for Dr. A stating that she is satisfied with the color, shape, and fit of the bridge.

Dr. W wrote on September 29, 1999, that in his opinion, the claimant "has been disabled since the first time [he] saw her on May 18, 1999," and "is unable to work." Answering questions posed by the claimant in a letter dated May 23, 2000, Dr. W stated that he has diagnosed the claimant with PTSD, major depression with suicidal ideation, and panic disorder with agoraphobia; that these conditions are directly attributable to her workers' compensation claim of \_\_\_\_\_; and that the report of Dr. C does not change either his diagnoses or his opinion because Dr. C did not rely on history to form his opinion. Dr. C's September 19, 1999, report states the results of his examination and diagnoses major depression with mood congruent psychotic features. Dr. C notes a family history of mental illness but does not comment on the relationship between the claimant's \_\_\_\_\_, injury to her teeth and her depression.

In addition to the dispositive conclusions, the claimant challenges findings that Dr. W's opinion is conclusory and does not establish a proper causal relationship and that the claimant's current psychological problems are not a direct result of the \_\_\_\_\_, compensable injury.

The claimant had the burden to prove that she sustained the claimed injury and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). It was within the province of the hearing officer, as the finder of fact, to determine that Dr. W's opinion on causation was not persuasive and that the link between the claimant's

injury to her teeth and her diagnosed psychological problems was too attenuated. The hearing officer could also conclude from the evidence that the claimant failed to prove a period of disability resulting from the injury to her teeth.

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert E. Lang  
Appeals Panel  
Section Manager