

## APPEAL NO. 002415

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 19, 2000. The hearing officer determined that the appellant's (claimant) hepatitis C was not caused by reasonable and necessary medical treatment received for the original compensable injury and that the respondent (carrier) did not waive the right to contest compensability of the hepatitis C. The claimant appealed the adverse determination that his hepatitis C was not caused by reasonable and necessary medical treatment received for the compensable injury on the grounds of sufficiency of the evidence. The carrier filed a response contending that the evidence was sufficient to support the determination of the hearing officer and urged affirmance. The issue as to carrier waiver of the right to contest compensability of the hepatitis C was not appealed and has become final by operation of law. Section 410.169.

### DECISION

Affirmed.

The claimant attached to his request for review certain documents which were not offered into evidence at the CCH. The Appeals Panel is generally constrained to consider only the record of the hearing developed below with certain exceptions not applicable here. Section 410.203(a).

The parties stipulated that the claimant sustained a compensable "closed head" injury on \_\_\_\_\_. The claimant was subsequently diagnosed with hepatitis C. It was the claimant's position that he became infected with the virus when he received "plasmalyte" transfusions during the hospital stay necessitated by the occurrence of the injury. The claimant's wife, Mrs. B, testified that the claimant was hospitalized after the injury and surgery was required to remove the claimant's right eye damaged during the incident. Mrs. B testified that she and other family members saw the claimant receiving three units of blood rather than the plasmalyte noted by the hospital in the medication log. Mrs. B stated that the claimant did not have any other blood transfusions after this date but admitted that the claimant had undergone four back surgeries in the 1970's for which he had received blood transfusions.

The claimant offered hospital records from \_\_\_\_\_, which include a log of medications administered during the stay. The log reflects that plasmalyte was administered intravenously to the claimant. A progress note from Dr. G dated July 27, 1993, indicates that he was treating the claimant for chronic hepatitis C having completed 3.5 months of interferon therapy. A letter dated August 25, 1993, from Dr. M states that the claimant had been a patient of Dr. M's since 1983 and that the claimant had not been diagnosed with hepatitis B or C prior to \_\_\_\_\_. The claimant also offered a letter from Dr. C dated September 1, 1998, in which he indicated that the claimant "has had hepatitis C." A hepatitis diagnostic profile test performed on June 25, 1986, confirmed the

presence of the hepatitis A virus in the claimant's blood. A blood test performed on November 13, 1991, reflects elevated amounts of bilirubin and AST and ALT values.

The carrier offered a letter from Dr. T dated July 24, 1993. Dr. T was requested by the carrier to review the claimant's medical records regarding a diagnosis of hepatitis C. Dr. T noted the elevated bilirubin levels and AST and ALT values in testing performed on November 13, 1991, and in additional tests performed on \_\_\_\_\_, March 22, 1993, and April 13, 1993. Antibodies to hepatitis C were found to be present on a test performed on March 29, 1993. A liver biopsy revealed a pattern of abnormalities consistent with chronic viral hepatitis. Dr. T noted that none of the common risk factors for hepatitis C transmission such as blood transfusions, tatoos, or intravenous drug abuse were indicated at any point in the medical record and he wrote:

[T]hus it is difficult to identify the precise time of onset of infection. However, the abnormal AST value present at the time of presentation with the facial injuries suggests that the chronic hepatitis C likely predated this event. The average period of time elapsing between onset of infection and first liver enzyme abnormalities is approximately 6 weeks with the shortest reported incubation interval is 2 weeks for this disease. Therefore it is impossible to attribute AST abnormalities present on 8/3/92 to hepatitis C transmitted by any blood transfusions or surgical procedures performed at the time of treatment for this gentleman's facial injuries in \_\_\_\_\_.

Dr. R by letter dated September 23, 1993, opined that there was nothing in the record to indicate that the claimant acquired the hepatitis C as a result of his accident. Dr. R reviewed records, demonstrating that after an incident more than twenty years ago the claimant had received multiple blood transfusions. He believed that "this would be reason to expect hepatitis C to be present. At that time, we had no means of screening the blood, and this was one of the more common reasons for what was then termed non-A, non-B hepatitis." Dr. M in an undated letter stated "[at] the request of the above named claimant's wife, I can avow that [the claimant] could have had HCV infection prior to the accident. There is no method to determine if he did or did not have hepatitis prior to accident [sic]."

An injury or condition that results from proper or necessary treatment for a compensable injury is itself compensable. Texas Workers' Compensation Commission Appeal No. 950938, decided July 24, 1995. The claimant had the burden to prove by a preponderance of the evidence that the hepatitis C was caused by the \_\_\_\_\_, compensable injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The question as to the cause of the hepatitis had to be proved by expert evidence to a reasonable degree of medical probability. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). Whether the necessary causation existed was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94266, decided April 19, 1994.

The hearing officer considered the evidence and concluded that there was insufficient evidence to establish a causal link between the claimant's original compensable head injury and the subsequent development of hepatitis C and therefore the hepatitis C was not caused by the original injury or the resulting medical treatment. In his appeal of this determination, the claimant contends that the evidence did establish causation. Whether the reasonable and necessary medical treatment required to treat the compensable injury caused the hepatitis C was a question of fact for the hearing officer to decide. We will not reverse his determination unless it is so against the great weight and preponderance of the evidence as to be clearly erroneous and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Section 410.165(a) provides that the hearing officer, as fact finder, is the sole judge of the weight and credibility to be given the evidence. In the discharge of his responsibility the hearing officer resolved the conflicts in the evidence and judged the weight to be given to the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We have reviewed his findings and conclude that they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm the hearing officer's decision and order.

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Kathleen C. Decker  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Kenneth A. Huchton  
Appeals Judge