

APPEAL NO. 002515

Following a contested case hearing held in Austin, Texas, on October 3, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the two disputed issues by concluding that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease or a specific injury and, that had there been a compensable injury, the date of injury would have been _____. The claimant has appealed, asserting her disagreement with these conclusions and certain underlying findings of fact because she believes her evidence established her contentions. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged findings and conclusions.

DECISION

Affirmed.

The claimant testified that since 1991 she has been employed as a manager of (employer); that because her duties include assisting with the pelvic examinations of clients, when she commenced her employment she underwent the original series of vaccinations against hepatitis B and has since had periodic booster shots, all apparently without untoward reactions; that immediately after her last booster shot on _____, she began to experience symptoms including pain in her bilateral shoulder, wrist, and hand joints; that she felt that she was "having a pretty bad reaction"; and that the intensity of these symptoms eventually abated. She indicated that after this experience, she made several visits to the doctor for her allergies, hyperthyroidism, and other health matters but did not mention her booster shot reaction to the doctor. The claimant said that the doctors initially felt that she had rheumatoid arthritis and that her current condition has not been given a particular name but that it includes muscle weakness, fatigue, hoarseness, joint pain, numbness, and a compromised immune system. She does not challenge findings that she has a long history of numerous mental and physical afflictions and that she has a changing constellation of symptoms attributed to the booster shot of _____.

The claimant further stated that the first doctor she saw for this condition was Dr. SC; that she also was seen by Dr. MP; and that her current treating doctor is Dr. AC whose diagnosis is chronic inflammatory polyneuralgia. She also introduced voluminous articles and reports on the hepatitis B vaccination controversy into evidence and in closing argument called the hearing officer's attention to several specific portions.

Dr. SC reported on January 29, 1999, that the claimant has migratory arthralgias with an essentially normal examination and that this could be some kind of postviral problem or other rheumatologic problem. Dr. SC reported on February 17, 1999, that the assessment is "rheumatoid factor, positive arthritis"; that investigations are underway concerning a potential link between the hepatitis B vaccine and rheumatoid arthritis; and that "this is a possibility in her case."

Dr. MP, a rheumatologist, reported on March 3, 1999, that the claimant's joint pain and achiness following the booster shot lasted several days and then resolved; that she continued to have occasional achiness in her shoulders and hands; and that in the past three months she has developed accelerated attacks of severe joint pain. Dr. MP's impression was rheumatoid factor and he stated that the claimant does not meet the criteria for a diagnosis of rheumatoid arthritis. Dr. MP also mentioned that the claimant engaged him in a lengthy discussion of causality in terms of the hepatitis B vaccination and that he told her that while such may be "a possibility," it would be inappropriate to use terms of "probability" or "certainty." Dr. MP wrote on July 28, 1999, that the onset of the claimant's illness appears to coincidentally fall after her receiving the vaccination; that while no firm conclusion can be drawn, it appears there is a temporal relationship; and that there have been case reports of rheumatoid arthritis developing following hepatitis B vaccinations.

Dr. AC reported on January 21, 2000, that the claimant's history is consistent with a hepatitis B vaccine reaction. He stated that the claimant developed multiple symptoms; that she has been diagnosed with a hepatitis B vaccine reaction; and that "[h]er chronic inflammatory demyelinating polyneuropathy, fatigue, abnormal reflex, numbness and tingling, severe muscular weakness, and immune mechanism disorder are a result of the adverse reaction to the hepatitis B vaccine."

Dr. P, who examined the claimant for the Texas Workers' Compensation Commission, reported on July 12, 1999, that the claimant suffers from rheumatoid factor-positive and migratory polyarthralgias but does not meet the diagnostic criteria for rheumatoid arthritis. Dr. P further stated, concerning the causality of the April 8, 1998, hepatitis B booster shot, that the available information does not clearly support a causal role for the vaccine and that while case reports exist, no studies of sufficient size and statistical validity had been done to support a causal relationship. Dr. P's report of April 26, 2000, iterates his opinion.

Dr. A reported on April 3, 2000, that he had reviewed the claimant's medical records in April 1999, and that in his opinion, noting the absence of EMG and nerve conduction studies, the claimant does not have a confirmed diagnosis of neurological disease. Dr. A further stated that not only are Dr. AC's diagnoses "uncertain," but that there are no epidemiological studies to support the thesis that hepatitis B vaccine causes neurological problems.

Concerning the date-of-injury issue, the claimant further testified that when she read a newspaper article on _____, about a controversy over whether hepatitis B vaccination shots can result in numerous adverse reactions, including conditions similar to rheumatoid arthritis and multiple sclerosis, that she then had reason to relate her symptoms to her April 8, 1998, booster shot. On her Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), the claimant describes the occurrence of the injury as "reaction to Hepatitis B Booster," and indicates that the date she first knew the occupational disease may be related to her employment was

_____, and the date she was last exposed to the cause of the occupational disease was April 8, 1998.

The claimant had the burden to prove with a preponderance of the evidence that she sustained an occupational disease in the course and scope of her employment and that her date of injury is _____, as she contends. 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.)). The hearing officer's discussion and findings make clear that he felt the evidence established a specific injury, namely, the booster shot, and not an occupational disease injury; that the date of the injury was the date the claimant received the shot, April 8, 1998, and not the date she read the newspaper article; and that the evidence failed to establish that her current physical maladies were caused by the booster shot. 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).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge