

## APPEAL NO. 002565

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 13, 2000. The hearing officer determined that the respondent's (claimant) depression and right knee injury were the result of the \_\_\_\_\_, compensable injury and that the claimant had disability resulting from the compensable injury including, but not limited to, the period from January 11, 2000, through June 25, 2000. The appellant (carrier) appealed, asserting that the claimant failed to prove that the depression is part of the compensable injury. The hearing officer's determinations of the compensability of the right knee injury and the period of disability have not been appealed and have become final. The claimant responded to the carrier's appeal, asserting that the hearing officer's decision regarding the compensability of the depression is supported by the evidence.

### DECISION

Affirmed.

The hearing officer found that the claimant's depression is the naturally flowing result of the compensable injury of \_\_\_\_\_. The carrier asserts that the evidence is insufficient to establish a causal relationship between the claimant's injury and depression, noting that there are remarkable similarities between the report of Dr. W and a report reviewed by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 990257, decided March 24, 1999. We agree that Dr. W's report is the linchpin of the hearing officer's determination that the claimant's depression is a part of the compensable injury and that there are similarities between the report reviewed in Appeal No. 990257, *id*, and the report admitted into evidence in this case. We do not, however, accept the carrier's supposition that the similarities in the report mandate a reversal of the hearing officer's determination in this matter that the claimant's depression is the naturally flowing result of the compensable injury.

In Appeal No. 990257, *id*, we reviewed the status of the law applicable to follow-on psychological injuries, noting as follows:

In Texas Workers' Compensation Commission Appeal No. 961449, decided September 9, 1996, we stated that "if a claimant's psychological condition is causally related to the compensable injury, it, too, is compensable," and "[t]he fact that there may be more than one cause of the claimant's psychological condition and that there are other stressors in this case beyond the claimant's chronic pain and multiple failed surgeries does not preclude a finding of compensability, provided that there is a causal connection between the compensable injury and the claimant's psychological problems." In Texas Workers' Compensation Commission Appeal No. 950749, decided June 21, 1995, the Appeals Panel stated "[although the claimant may not have experienced a psychological problem but for the fact

that a back injury occurred in \_\_\_\_\_, and set in motion a protracted dispute resolution process, this is not alone a sufficient basis to conclude that an additional compensable injury has occurred." Appeal No. 950749 quoted the prior decision of Texas Workers' Compensation Commission Appeal No. 94591, decided June 22, 1994, which in turn quoted Texas Employers Ins. Ass'n v. Wilson, 522 S.W.2d 192, 195 (Tex. 1975), as follows:

[i]t therefore must be concluded that although the claimant may be disabled by reason of a neurosis traceable in part to *circumstances* arising out of and immediately following his injury, there must be a finding that the neurosis was the result of the *injury*. [Emphasis in original.]

We concluded that "[i]f a claimant's psychological problems are traceable to the 'circumstances arising out of and immediately following the injury' as opposed to being the 'result of the injury,' they are not part of the compensable injury." Appeal No. 961449, *supra*.

In the case we now consider, the hearing officer was not persuaded that the claimant's depression was caused by the compensable injury to the right knee, but was apparently persuaded that it was traceable to circumstances arising out of the injury, such as dealing with the "system" and financial stress, and to his non-compensable injuries. The hearing officer could also have concluded that the expert evidence did no more than establish that the claimant was not depressed before the injury, but was depressed after the injury. This "before and after" analysis does not as a matter of law establish causation. **Ultimately, the cause of the claimant's depression was a question of fact for the hearing officer to decide.** [Emphasis added].

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Based upon evidence similar to that upon which another hearing officer found that depression was not a part of the compensable injury in Appeal No. 990257, *supra*, this hearing officer found that the depression was a naturally flowing result of the injury and, therefore part of the compensable injury. An appeals-level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). The hearing officer's determination is not so against the great weight

of the evidence as to be manifestly unjust and we will not substitute our judgement for his. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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Kenneth A. Huchton  
Appeals Judge

CONCUR:

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Kathleen C. Decker  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge