

APPEAL NO. 010905
FILED JUNE 12, 2001

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 March 20, 2001. The hearing officer determined that the _____, compensable injury of the appellant (claimant) does not extend to depression and that the correct impairment rating (IR) is 6%, as certified by the designated doctor. Claimant appealed these determinations on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that the compensable injury did not include depression. Claimant asserts that the hearing officer failed to consider whether the depression naturally resulted from the compensable injury. Claimant also asserts that the hearing officer ignored the "sole cause" test and did not make carrier prove that something else is the sole cause of claimant's depression.

The hearing officer determined that claimant sustained a compensable shoulder and neck injury on _____, and that claimant had psychological problems that predated the compensable injury. The hearing officer determined that the psychological problems are "not causally related" to the compensable injury and also that the compensable injury "did not accelerate" the psychological problems. Therefore, it appears that the hearing officer judged the credibility of the evidence and determined that, not only did claimant fail to prove initial causation, she also did not prove that she sustained an aggravation injury. Claimant did not make a prima facie showing that the depression was causally connected to the compensable injury; so carrier did not have the burden to prove sole cause. See Texas Workers' Compensation Commission Appeal No. 992774, decided January 26, 2000.

Claimant complains that the hearing officer did not consider the designated doctor's opinion regarding causation. However, we note that the designated doctor did not have presumptive weight regarding extent of injury. See Texas Workers' Compensation Commission Appeal No. 992711, decided January 20, 2000. Whether claimant met her burden of proof was a fact issue for the hearing officer, who was the sole judge of the credibility of the evidence before him. We conclude that the hearing officer's determination regarding extent of injury is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Claimant next contends that the hearing officer erred in determining that claimant's IR is 6%. The designated doctor determined that, if the injury included the depression, the

IR would be 56%, and if not, it would be 6%. However, because we have affirmed the determination regarding extent of injury, we also affirm the IR determination. The hearing officer's determination that claimant's IR is 6% is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

We affirm the hearing officer's decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge