

APPEAL NO. 010928
FILED JUNE 15, 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 (CCH) was held on April 9, 2001. The hearing officer resolved the disputed issues by deciding that the parties' agreement of January 12, 2001, is not set aside and remains binding on both parties; that the respondent's (claimant) alleged hypertension, heart injury, and left eye injury are not compensable; that the claimant's post-traumatic stress disorder (PTSD), depression, post-head injury syndrome, headaches, blurred vision, short-term memory loss, and obsessive-compulsive traits are compensable; and that the claimant has sustained disability since June 1, 1999. The appellant (carrier) appealed. No response was received from the claimant.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining not to set aside the parties' benefit dispute agreement of January 12, 2001. The carrier requested that the agreement be set aside. Section 410.030(a) provides that an agreement signed in accordance with Section 410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless the Texas Workers' Compensation Commission or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement. It is undisputed that the claimant sustained a compensable injury on _____, when, while performing her job duties as an apartment manager, she was beaten by a visitor she had asked to leave the premises. In the agreement of January 12, 2001, the parties agreed that the claimant's average weekly wage is \$375.00 (the parties also agreed to that at the CCH); that disability began on June 1, 1999, and continues; that the injury of _____, does not include the heart, hypertension, or the left eye; and that the injury of _____, does include the psychiatric conditions, specifically including but not necessarily limited to, depression and PTSD.

The hearing officer found that the carrier had not demonstrated that the agreement should be set aside on the ground of fraud, newly discovered evidence, or any other good and sufficient cause; that the claimant does not wish to set aside the agreement; that the agreement was not entered into as the result of a bilateral mistake of the parties; and that at the time the parties entered into the agreement, the parties did not fail to understand the terms and effect of the agreement. The carrier asserts that the claimant also wished to be relieved of the effect of the agreement. Based on the parties' positions and the evidence, the hearing officer found contrary to that assertion. In the opening statement, the ombudsman assisting the claimant urged that the carrier does not have good cause to set aside the agreement, and did not state that the claimant wanted to set aside the agreement, and in closing argument noted that the claimant had entered into the

agreement in good faith and that it was the carrier who had brought up the issues again. In the discussion section of her decision, the hearing officer noted that the claimant did not wish to set aside the agreement, but that in the event the agreement was set aside, then the claimant wanted a decision in her favor on all of the disputed health conditions, rather than just some of those conditions. We note that the claimant has not appealed the hearing officer's decision to not set aside the agreement or the hearing officer's decision that her hypertension, heart injury, and left eye injuries are not compensable.

The hearing officer decided that even if the agreement were to be set aside, it would be appropriate to determine that the claimant's compensable injury of _____, does not extend to or include any hypertension, heart injury, or left eye injury, but does extend to and include the claimant's PTSD, depression, post-head injury syndrome, headaches, blurred vision, short-term memory loss, and obsessive-compulsive traits, and that such compensable injuries have caused the claimant to have disability since June 1, 1999. The carrier contends that "the alleged psychological conditions" are not related to the compensable injury and that such conditions were pre-existing and thus the period of disability is not appropriate. The hearing officer considered the carrier's contention and stated in the discussion section of her decision that whatever psychological condition the claimant may have suffered prior to her work-related injury, such condition was aggravated by the claimant's work-related injury. The aggravation of a preexisting condition is a compensable injury. Peterson v. Continental Casualty Company, 997 S.W. 2d 893 (Tex. App.-Houston [1st Dist.] 1999, no pet.). While there is conflicting medical evidence regarding the claimant's psychological conditions, such conflicts in the evidence were for the hearing officer to resolve as the finder of fact. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge