

APPEAL NO. 011265  
FILED JULY 17, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). Following a contested case hearing held on March 20 and May 21, 2001. The hearing officer resolved the disputed issue by determining that the respondent's (claimant) compensable injury of \_\_\_\_\_, includes a thoracic sprain and depression. The appellant (carrier) has appealed this determination on evidentiary sufficiency grounds. The carrier also asserts that the hearing officer's discussion of the evidence reflects that he erroneously shifted the burden of proof on the compensability of the emotional disturbance to the carrier. The claimant's response urges the sufficiency of the evidence and the absence of error.

DECISION

Affirmed.

The hearing officer did not err in reaching the appealed determination nor did he erroneously shift the burden of proof to the carrier. The claimant testified that on \_\_\_\_\_, he injured his back, both the upper and lower portions, while lifting a truck drive train; that he continued working until the pain got so bad he went to a hospital emergency room (ER) on December 16, 1997; and that after receiving treatment at the hospital, he commenced treatment with Dr. B, who provided him with physical therapy for both his upper and lower back. An ER record of December 16, 1997, states the diagnosis as "acute lumbar thoracic strain." Other medical records also refer to the claimant's thoracic spine symptoms. The carrier accepted only an injury to the low back. The claimant also indicated that the severe pain he has had from his injury, running from his head down into his legs and interfering with his sleep, has caused the depression with which he has been diagnosed. As he put it, "my problem is that pain." The claimant also stated that he has been upset by the carrier's resistance to proved treatment for all aspects of his injury. The October 15, 1998, psychological evaluation report of Dr. Z includes in the diagnoses atypical depression, psychological factors associated with a medical condition, and chronic pain.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, 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)). The Appeals Panel, an appellate reviewing tribunal, 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).

Finally, concerning the contention that the hearing officer impermissibly shifted the burden of proof to the carrier, we find the contention to be without merit. The hearing officer's discussion simply observes that the carrier cannot show that the emotional disturbances of which the claimant has complained are the sole cause of his frustration and concerns related to his current life settings and that the claimant has shown that he has some depression related to his chronic pain from his injury. In our view, the hearing officer is simply stating that the carrier, who argued that the claimant's depression was due to his frustration with various carrier actions concerning his claim, did not show that such was the sole cause of the claimant's depression.

The decision and order of the hearing officer are affirmed.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Michael B. McShane  
Appeals Judge