APPEAL NO. 011432
FILED JULY 30, 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 May 9, 2001. The hearing officer held, on the issues presented, that the claimant's injury did not extend to and include post concussion syndrome and major depression, and that he had reached maximum medical improvement (MMI) on September 17, 1999, with a zero percent impairment rating (IR), according to the report of the designated doctor, which was not against the great weight and preponderance of the evidence.

The claimant has appealed. He argues that it was error for the hearing officer to characterize his back injury as a strain because this extent issue was not before him and the claimant withheld evidence about a back injury as a result. He argues that his medical evidence is more persuasive on the issue of sequelae from a head injury, and points out that the carrier's doctor did not do a clinical assessment. He argues that he could not have been at MMI on the date stated by the designated doctor because he continued to need medical treatment. The carrier responds that the evidence supports the hearing officer's decision. The carrier further notes that when MMI and IR are being determined, the nature of the conceded compensable injury was necessarily a part of the dispute.

DECISION

We affirm the hearing officer's decision and order.

The hearing officer's discussion of the evidence presented in testimony and through exhibits is thorough and we incorporate it here. We do not agree that there was error by the hearing officer on any of the points appealed.

The claimant was working as a security guard on _____. The hearing officer stated that the claimant fell through a temporary flooring and a board hit his head. He has received extensive treatment since then and conflicting opinions were presented as to the nature and extent of any psychological extent from this original episode. The treatment records indicate that the claimant had cervical and lumbar strain and/or lumbar discogenic syndrome; the designated doctor noted mild disc bulging present in a lumbar MRI, with all other objective studies within normal limits. The records in evidence from both parties indicate no active and ongoing dispute for treatment of the claimant's neck and back injuries. The designated doctor evaluated both areas but disallowed range of motion studies due to clinical observation, largely due to observing the claimant leaving the building at a brisk walk when he had assumed a "Parkinson's-like" shuffling gait under examination.

We do not agree that the hearing officer went beyond the issues presented when he characterized, in the context of an MMI and IR dispute, the back and neck injuries. We have before stated that it is incumbent upon parties to activate any dispute there may be

over the extent of the injury before arriving at the point where an MMI and IR must be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 941333, decided November 21, 1994. Nothing in the hearing officer's decision will have, as argued by the claimant, an egregious result that will deprive him of treatment for his compensable back and neck injuries. However, we would also observe that the evidence supports the hearing officer's characterization of the original injury as causing these strain injuries (the mechanism of injury being hit in the head by a board that "popped up" unexpectedly to hit the claimant).

The hearing officer's decision on the extent of injury as well as MMI and IR are also sufficiently supported. Where experts differ, the hearing officer is required to weigh the evidence for credibility and relevance. Even where different inferences could be drawn from the evidence, the hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a).

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would 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); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

Development of psychological sequelae from a blow to the head involves matters beyond common experience, and medical evidence should be submitted which establishes the connection as a matter of reasonable medical probability, as opposed to a possibility, speculation, or guess. *See* Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.); Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992; Texas Workers' Compensation Commission Appeal No. 93774, decided October 15, 1993.

"Maximum Medical Improvement" is defined, as pertinent to this case, as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated . . . ." Section 401.011(30)(A). We have stated many times that the presence of pain is not, in and of itself, an indication that an employee has not reached MMI; a person who is assessed to have lasting impairment may indeed continue to experience pain as a result of an injury. *See* Texas Workers' Compensation Commission Appeal No. 93007, decided February 18, 1993. An IR must be based upon "objective clinical or

laboratory finding." Section 408.122(a). The report of a Texas Workers' Compensation Commission-appointed designated doctor is given presumptive weight. Sections 408.122(c) and 408.125(e). The amount of evidence needed to overcome the presumption, a "great weight," is more than a preponderance, which would be only greater than 50%. *See* Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Medical evidence, not lay testimony, is the evidence required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92164, decided June 5, 1992.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge