APPEAL NO. 011447
FILED AUGUST 10, 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 May 9, 2001. With respect to the issues before him the hearing officer determined that the appellant (claimant herein) does not continue to suffer effects from the injury of _____ and that the claimant sustained disability secondary to the compensable injury beginning on April 17, 1998, and continuing through April 21, 1998. The claimant appeals, contending that the hearing officer's determinations are against the great weight and preponderance of the evidence. The respondent (carrier herein) replies, urging we affirm the decision of the hearing officer.

DECISION

We affirm the decision of the hearing officer as to the matters within his authority.

On _____, there was a bomb scare at the high school where the claimant was a teacher. She escorted about 30 children out of the building and remained outside in 100 degree temperature for about 45 minutes. Standing in the heat aggravated the claimant's lupus and she entered (hospital) on April 21, 1998, and was discharged the following day. She currently has a number of ailments which she believes was caused by aggravating her lupus. Although the carrier accepted her injury claim in 1998, the dispute is whether the claimant continues to have effects from the exposure which caused her lupus to be aggravated.

The Appeals Panel has required the necessary proof of causation to be established where the subject matter is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. Texas Workers' Compensation Commission Appeal No. 93774, decided October 15, 1993; Hernandez v. Texas Employers Insurance Association, 783 S.W.2d 250 (Tex. App.-Corpus Christi 1989, no writ). In other words, in cases such as this, there must be expert medical evidence and the doctor's opinion must be based on more than mere possibility, speculation, or surmise. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). Although, it is not critical, as a matter of semantics, that the doctor use the particular words, "in reasonable medical probability," so long as that is the substance of his testimony. Transport Insurance Company v. Campbell, 582 S.W.2d 173 (Tex. Civ. App.-Houston [1st Dist.] 1979, writ ref'd, n.r.e.). In this instance, regarding the claimant's condition, her treating physician states in his July 27, 1998, report "there is possible relationship between events occurring on 4-16-98 and deterioration of health status. It (sic) is uncertain of any casual relationship." This opinion amounts to no more than mere speculation. Thus, there is evidence to support the hearing officer's decision that the claimant did not have continued effects from the _____, injury because the claimant did not meet her burden of proof.

Resolving the conflict in the evidence is the province of the hearing officer. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. 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 (Tex. Civ. App.-Amarillo 1974, no writ). 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). We conclude that the challenged determination was not so against the great weight and preponderance of the evidence as to be wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We caution, however, that the decision of the hearing officer not be overread. We have repeatedly held that a claimant may go in and out of disability and that a hearing officer does not have the authority to determine the issue of disability beyond the date of the CCH. Texas Workers' Compensation Commission Appeal No. 931049, decided December 31, 1993. Similarly, a claimant's need for medical care for a compensable injury may ebb and flow. Pursuant to Section 408.021(a) an injured employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. There is no authority under the 1989 Act for a hearing officer to end a claimant's right to future medical benefits for treatment of the compensable injury during the lifetime of the claimant. Issues and findings dealing with the extent of an injury and with disability far more clearly delineate the issues within the purview of a hearing officer than issues framed in terms of whether or not the claimant continues to suffer from the "effects" of an injury. Efforts by benefit review officers and hearing officers to keep the issues within the channels of the hearing officers' authority are more likely to facilitate the orderly resolution of benefit disputes.

Accordingly, the decision and order of the hearing officer are affirmed as to matters within his authority.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts

Appeals Judge