APPEAL NO. 011579
FILED AUGUST 29, 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 14, 2001. The hearing officer resolved the disputed issue by determining that the respondent's (claimant) _____, compensable injury does include the diagnosis of rheumatoid arthritis (RA), temporomandibular joint syndrome (TMJ), left knee injury, and left wrist sprain. The appellant (carrier) appealed and the claimant did not respond.

DECISION

Affirmed.

There was conflicting evidence presented on the issue of extent of the claimant's injury. The claimant presented the opinion of Dr. B, a medical doctor specializing in rheumatology, that the claimant had "traumatic induced RA" which was responsible for the claimant's various joint problems. Dr. B consistently related the "traumatic induced RA" to the original work injury sustained by the claimant. Dr. D, a medical doctor board certified in physical medicine and rehabilitation, testified that the medical literature does not support a relationship between trauma and the development of RA. Because causation in this case was not a matter within common knowledge or experience, the claimant was required to prove causation by expert evidence to a reasonable degree of medical probability. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. 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). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer's decision is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

The hearing officer's decision and order are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

DISSENTING OPINION:

I respectfully dissent, and would reverse and render a decision that the great weight and preponderance of the evidence is against the hearing officer's determination of extent of injury in this case.

The causal connection between a knee injury and the development of systemic rheumatoid arthritis is plainly beyond common experience, and a finding of a connection would need to be supported by expert opinion, rising to the level of reasonable medical probability. The hearing officer states that Dr. B has "opined" that the conditions are causally related. However, an "opinion" to me indicates some explanation or analysis, but there is none in anything presented here from Dr. B. Rather, he has simply pronounced in his treatment records that the claimant has "traumatically induced" arthritis. This is not opinion evidence rising to the level of reasonable medical probability and is a good deal less detailed than the opinion testimony found wanting in Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980), especially considering the live testimony of Dr. D as to the nature and cause of rheumatoid arthritis.

A legal sufficiency point must be sustained: (1) when there is a complete absence of a vital fact; (2) when rules of law or evidence preclude according weight to the only evidence offered to prove a vital fact; (3) when the evidence offered to prove a vital fact is no more than a mere scintilla; or (4) when the evidence conclusively establishes the opposite of the vital fact. Merrell Dow Pharmaceuticals, Inc. v. Havner, 953 S.W.2d 706, 711 (Tex. 1997). The last two plainly apply here, in my opinion. The hearing officer's decision is supported by no more than a mere scintilla of evidence and the opposing evidence conclusively establishes that the rheumatoid arthritis here is an ordinary disease of life, only temporally related to the knee injury.

Susan M. Kelley
Appeals Judge