

APPEAL NO. 012398
FILED NOVEMBER 27, 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 September 17, 2001. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to or include cervical spine, thoracic spine, or psychological injuries. In her appeal, the claimant argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The hearing officer did not err in determining that the claimant's compensable injury did not extend to cervical and thoracic injuries. The claimant had the burden to prove the causal connection between her compensable injury and injuries to her cervical spine and thoracic spine. Texas Workers' Compensation Commission Appeal No. 91028, decided October 23, 1991. There was conflicting evidence presented with regard to this issue. 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 and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was not persuaded that the claimant sustained her burden of proving that she sustained damage or harm to the physical structure of her body, as a result of her _____, compensable injury. Nothing in our review of the record reveals that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer also determined that the claimant's compensable injury did not extend to or include psychological injuries. In his discussion section, the hearing officer stated:

[I]t appears that the asserted anxiety and depression stem not from the compensable incident itself, but from the pain and loss of function associated with the injury. The prevailing jurisprudence on the issue indicates that a compensable mental injury must be the direct result of the same incident that may have caused other, physical injuries, as when a claimant's involvement in a car accident causes mental trauma independent of any physical trauma incurred. Typically, depression and anxiety that naturally flows from sustained pain and interference with pre-injury activities is not held to be within the purview of a compensable mental injury as contemplated by the Act.

From this statement it is apparent that the hearing officer applied an incorrect legal standard in determining that the claimant's anxiety and depression were not compensable.

Where, as the hearing officer determined here, the anxiety and depression are a result of sustained pain and interference with preinjury activities, the claimant has sustained her burden of proving the causal connection between her compensable injury and the anxiety and depression. See Texas Workers' Compensation Commission Appeal No. 010321, decided March 28, 2001 (where we reversed and rendered a determination that the claimant's depression was not compensable and rendered a new determination that the condition was compensable based upon the hearing officer's determination that the claimant's impaired physical condition caused the claimant's depression). See also Texas Workers' Compensation Commission Appeal No. 961449, decided September 9, 1996. There is no requirement that the psychological problem be the "direct result of the same incident that caused the physical injury" as the hearing officer stated. To the contrary, in circumstances such as those present here, where the anxiety and depression naturally flowed from the pain and limitations caused by the injury, those conditions are compensable; whereas anxiety and depression that resulted from the stress of going through the workers' compensation "system" or being involved in a protracted dispute with the carrier are not compensable. Appeal No. 961449. Based upon our determination that the hearing officer misapplied the law and his determination that the claimant's anxiety and depression "naturally flows from sustained pain and interference with pre-injury activities," we reverse the determination that the claimant's compensable injury does not extend to or include psychological injuries, and render a new determination that her compensable injury does include psychological injuries.

The hearing officer's determination that the claimant's compensable injury does not extend to and include injuries to her cervical spine and thoracic spine is affirmed. The determination that the compensable injury does not extend to or include psychological injuries is reversed and a new decision rendered that the claimant's compensable injury extends to and includes psychological injuries.

The true corporate name of the self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**WCI MANAGER
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge