

APPEAL NO. 012425
FILED NOVEMBER 14, 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 August 23, 2001, with the record remaining open until September 12, 2001. The appellant (claimant) appeals the hearing officer's determination that the claimant's compensable injury does not include mental depression. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

On _____, the claimant was attempting to sit on a chair and it rolled back, causing her to fall. At the CCH it was stipulated that the claimant sustained a compensable injury to her low back area, her neck, and her right brachial plexus area. The claimant contends that her compensable injury includes depression, and she offered her testimony and medical evidence. There was conflicting medical evidence that her depression resulted from circumstances due to loss of income or may have existed before the injury.

The hearing officer correctly noted that the claimant has the initial burden to prove that her depression is a part of the compensable injury. He found that her depression did not naturally result from her injury. We do not agree that the hearing officer "impermissibly" shifted the burden of proof to the claimant. In Texas Workers' Compensation Commission Appeal No. 992149, decided November 15, 1999, the Appeals Panel discussed the proof necessary to establish that a compensable injury extends to a psychological injury. The Appeals Panel stated:

In Texas Workers' Compensation Commission Appeal No. 950749, decided June 21, 1995, the Appeals Panel stated "[a]lthough the claimant may not have experienced a psychological problem but for the fact that a back injury occurred in February 1991, and set in motion a protracted dispute resolution process, this is not alone a sufficient basis to conclude that an additional compensable injury has occurred." Appeal No. 950749 quoted the prior decision of Texas Workers' Compensation Commission Appeal No. 94591, decided June 22, 1994, which in turn quoted Texas Employers Ins. Ass'n v. Wilson, 522 S.W.2d 192, 195 (Tex. 1975), as follows:

[i]t therefore must be concluded that although the claimant may be disabled by reason of a neurosis traceable in part to *circumstances* arising out of and immediately following his injury, there must be a finding that the neurosis was the result of the *injury*. [Emphasis in original.]

We concluded that "[i]f a claimant's psychological problems are traceable to the 'circumstances arising out of and immediately following the injury' as opposed to being the 'result of the injury,' they are not part of the compensable injury." [Texas Workers' Compensation Commission] Appeal No. 961449, [decided September 9, 1996].

The claimant points to the self-insured's independent medical examination IME doctor's report wherein he states that the claimant is unable to return to work because of her "severe depression which is a reaction to the injury." The hearing officer could have inferred that the IME doctor was stating that the claimant's depression was related to the circumstances of her injury rather than the result of her injury. Further, the hearing officer observed that the claimant's treating doctor made conclusory statements with no explanation or specific information as a basis for his conclusion. The Texas Supreme Court, in Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975), stated that whether a doctor's opinion is buttressed by an explanation goes to the matter of credibility of the witness and his opinion.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. The hearing officer determined that the evidence failed to establish that the claimant's alleged depression was a result of the compensable injury. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. In this case, there is sufficient evidence to support the hearing officer's decision that the claimant's depression was not part of her compensable injury. We therefore affirm the hearing officer's determination.

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

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge