

APPEAL NO. 012559
FILED DECEMBER 4, 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. The hearing officer resolved the disputed issues by determining that the appellant's (claimant) _____, compensable injury does not extend to and include her neck or post-traumatic stress disorder (PTSD) and that the respondent (carrier) did not waive its right to contest the compensability of the claimant's claimed neck injury and PTSD pursuant to Section 409.021. The claimant appealed both determinations on evidentiary sufficiency grounds and the carrier responded, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable chest and rib injury on _____, when the gas-operated cook kettle she was using at work exploded and knocked her to the ground. The claimant denied any psychological problems prior to _____, and was diagnosed with PTSD on July 12, 2000, by Dr. W, who attributed the diagnosis to the explosion at work. The claimant testified that she consistently complained to her doctors about neck pain as early as July of 2000, but that she was told there was nothing wrong with her neck and that it was "all in her head." The claimant testified that her neck pain became unbearable in September of 2000, and she was eventually diagnosed with a herniated nucleus pulposus at C5-6 and at C6-7. Dr. H performed neck surgery on the claimant in February of 2001. In his response to a letter of clarification as to the cause of the claimant's neck problems, Dr. H stated that he assumed they were a result of the explosion, based on the history given by the claimant.

There was conflicting evidence presented regarding the cause of the claimant's neck injury and PTSD. The hearing officer determined that the medical opinions which causally related the claimant's diagnosis of PTSD and neck problems to the compensable injury were based on the unreliable history given by the claimant. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The finder of fact may believe that the claimant has an injury, but disbelieve the claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by the testimony (or evidence) of a medical witness where the credibility of the testimony (or evidence) is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that

of the trier of fact, even if the evidence would support a different result. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084. We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Finally, the hearing officer did not err in determining that the carrier did not waive the right to dispute compensability of the claimant's claimed neck injury and PTSD per Section 409.021. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), effective March 13, 2000, provides, in part, that Section 409.021 and subsection (a) of Rule 124.3 "do not apply to disputes of extent of injury." Texas Workers' Compensation Commission Appeal No. 000784, decided May 30, 2000. Rule 124.3(c) further provides that if a carrier receives a medical bill that involves treatment(s) or service(s) that the carrier believes is not related to the compensable injury, the carrier shall file a notice of dispute of extent of injury in accordance with Rule 124.2. The claimant had the burden of proof on this issue. No evidence was presented as to when, if ever, the carrier received any bills relating to treatment for the claimant's claimed PTSD or neck injury, thereby triggering the requirements of Rule 124.2.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **RELIANCE NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

TIMOTHY J. McGUIRE
633 NORTH STATE HIGHWAY 161, SUITE 200
IRVING, TX 75038.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Michael B. McShane
Appeals Judge