

APPEAL NO. 021587
FILED AUGUST 7, 2002

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 opened on May 22, 2002. At that hearing, over the objection of the appellant (carrier), the hearing officer amended the issue from "Does the compensable injury of _____, include anxiety and depression?" to "Does the compensable injury of _____, include bipolar disorder and post-traumatic stress disorder [PTSD]?" based on a finding of good cause because the letter from the (Center), which diagnosed the bipolar disorder and PTSD, was dated May 17, 2002. The hearing officer granted a continuance until June 4, 2002, to give the carrier an opportunity to seek evidence in response to the May 17, 2002, (Center) letter. At the June 4, 2002, hearing, the carrier did not offer any additional evidence in response to the new evidence. The carrier's attorney stated that the carrier was not able to obtain such evidence in the time provided for doing so; however, he further noted, "we're okay, we'll proceed with the way the evidence is." With respect to the amended issue, the hearing officer determined that the respondent's (claimant) compensable injury of _____, includes bipolar disorder and PTSD. In its appeal, the carrier asserts error in the hearing officer's having agreed to amend the issue and also argues that the hearing officer's decision is "based on evidence that is absolutely legally insufficient." The file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

Initially, we address the carrier's argument that the hearing officer erred in amending the disputed issue from whether the compensable injury included anxiety and depression to whether it included PTSD and bipolar disorder. As noted above, when the hearing officer amended the issue, she granted a continuance to provide the carrier with an opportunity to respond to the claimant's new evidence, specifically the (Center) letter. At the hearing on June 4, 2002, the carrier's attorney stated that the carrier was not able to obtain any additional evidence; however, he further stated that the carrier was willing to proceed with the evidence as it was. The carrier did not renew its objection to the hearing officer's having amended the issue and, as such, it waived the issue for purposes of appeal.

The hearing officer did not err in determining that the claimant's compensable injury of _____, includes bipolar disorder and PTSD. That issue presented a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. We find no merit in the assertion that the evidence from the Center is insufficient as a matter of law to establish a causal connection between the claimant's compensable injury and his bipolar disorder and PTSD. At best, conflicting evidence was presented regarding the extent of the

compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts the evidence has established. Nothing in our review of the record reveals that the determination that the claimant's compensable injury includes PTSD and bipolar disorder is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge