

APPEAL NO. 030966
FILED MAY 27, 2003

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 March 20, 2003. The hearing officer determined that (1) the appellant's (claimant) compensable injury of _____, does not extend to include depressive or anxiety disorder; (2) the claimant's date of maximum medical improvement (MMI) is March 28, 2002; and (3) the claimant's impairment rating (IR) is zero percent, as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The claimant appeals these determinations on legal and sufficiency of the evidence grounds. The claimant also asserts error in the hearing officer's denial of her request for deposition on written questions to the designated doctor. The respondent (carrier) urges affirmance.

DECISION

Reversed and remanded.

We first address the claimant's assertion that the hearing officer erred in denying her request for deposition on written questions to the designated doctor. We note that the claimant did not reurge her motion at the hearing or otherwise preserve error in the record upon receipt of the hearing officer's order denying the request for deposition. The asserted error was, therefore, waived and will not be addressed for the first time on appeal.

EXTENT OF INJURY

The hearing officer erred in determining that the compensable injury of _____, does not extend to include depressive or anxiety disorder. We have said that depression is compensable if it is the "result of the injury" as opposed to being traceable to the "circumstances arising out of and immediately following the injury." Texas Workers' Compensation Commission Appeal No. 961449, decided September 9, 1996. To be clear, where the depression naturally flowed from the pain and physical limitations caused by the compensable injury, the depression is compensable; whereas depression that resulted from the stress of the workers' compensation "system" or financial difficulties is not compensable. See Texas Workers' Compensation Commission Appeal No. 030056, decided February 12, 2003, and cases cited therein. The fact that there may be more than one cause of the claimant's depression does not preclude a finding of compensability, provided that there is a causal connection between the compensable injury and the claimant's condition. Appeal No. 961449, *supra*. Whether the claimant's depression and/or anxiety resulted from the compensable injury was a question of fact for the hearing officer to resolve.

In reaching a decision, it appears that the hearing officer did not fully consider the claimant's evidence, stating:

"The claimant was diagnosed by...psychologists, with major depressive disorder and generalized anxiety disorder under Axis I. ... Neither [psychologist] met the definition of doctor provided in Section 401.011(17) and for this reason could not render expert evidence on the question of causation of the depression."

We have held, however, that the reports of a clinical psychologist are medical evidence, and such reports have been considered in establishing causation of a claimant's psychological condition. See Texas Workers' Compensation Commission Appeal No. 970730, decided June 9, 1997, for a discussion on this point and a listing of citations where we have regarded the reports of clinical psychologists as medical evidence. Accordingly, we reverse and remand the hearing officer's determination for further consideration of the evidence, including the reports from the claimant's psychologists.

MMI/IR

The hearing officer erred in determining that the claimant reached MMI on March 28, 2002, with a zero percent IR. Given our reversal of the extent-of-injury determination, we likewise reverse and remand the hearing officer's MMI/IR determinations for further consideration. On remand, the hearing officer may seek clarification of the designated doctor's certification for depression and/or anxiety, if necessary.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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

**CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge