

APPEAL NO. 031138  
FILED JUNE 17, 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 April 3, 2003. The hearing officer determined that the compensable injury sustained by the appellant (claimant) on \_\_\_\_\_, does not include depression, whether described as major or reactive depression or dysthymic disorder, and that the claimant is not entitled to supplemental income benefits (SIBs) for the first or second compensable quarters. The claimant appeals these determinations and requests that consideration be given to the new evidence attached to her request for review, which was not offered at the hearing. The respondent (self-insured) urges affirmance.

DECISION

Affirmed.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that is offered for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the documents that the claimant attached to her request for review, which were not offered into evidence at the hearing. Accordingly, we decline to consider these documents on appeal.

The hearing officer did not err determining that the claimant's compensable injury does not include depression. 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. Where it is determined that depression naturally flowed from the pain and physical limitations caused by the compensable injury, it is compensable; however, depression resulting 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. We note that the hearing officer inaccurately states in the Statement of the Evidence that "a psychologist who is a Ph.D [sic] and not a doctor as that term is contained in the 1989 Act cannot provide probative evidence on causation." We have held 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. Despite the inaccurate statement, we perceive no error in the hearing officer's extent-of-injury determination because he further explained that even if he were to have credited the opinions of the psychologists as "expert evidence," their opinions were not persuasive because they are "extremely vague in any discussion of cause and point to numerous stressors other than the compensable injury."

Whether the claimant's depression resulted from the compensable injury was a question of fact for the hearing officer to resolve. 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 have been established from the evidence presented. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

An employee is entitled to [SIBs] if on the expiration of the impairment income benefit [IIBs] period computed under Section 408.121(a)(1) the employee:

- (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
- (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
- (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
- (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), applicable in this case, states that the good faith criterion will be met if the employee:

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

A finding of no ability to work is a factual determination for the hearing officer. The hearing officer found that the claimant did not provide a narrative complying with the

requirements of Rule 130.102(d)(4) and that she had some ability to work during the qualifying period corresponding to the first and second compensable quarters. We perceive no reversible error in the hearing officer's SIBs determinations.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**RM  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Chris Cowan  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge