

APPEAL NO. 031237
FILED JUNE 24, 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 17, 2003. The hearing officer decided the compensable injury of _____, extends to and includes mental depression, but does not extend to and include any eye problems; that the respondent (claimant) is entitled to reimbursement of some travel expenses; and that the appellant (carrier) is entitled to a reduction of 50% in the amount of supplemental income benefits (SIBs) owed to the claimant based on contribution from her earlier compensable injury in 1995. The carrier appeals the disputed issues and the claimant responds, urging affirmance.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

EXTENT OF INJURY

The hearing officer's determination that the claimant's injury does not extend to her eye problems has not been appealed and has become final.

The carrier contends that the hearing officer relied on "flawed medical evidence" in concluding that the compensable injury was a cause of the claimant's depression. The carrier made similar arguments at the hearing. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). Our review of the record reveals that the hearing officer's determination was supported by sufficient evidence and is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb this determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

MILEAGE ISSUE

The carrier contends the hearing officer erred in awarding the claimant reimbursement for travel expenses arguing that the claimant is not entitled to reimbursement for travel when the claimant is driven by another individual. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6(a) (Rule 134.6(a)) provides, "When it becomes reasonably necessary for an injured employee to travel in order to obtain reasonable and necessary medical care for the injured employee's compensable injury, the injured employee may request reimbursement from the insurance carrier by submitting a request to the carrier in the form, format, and manner required by the [Texas Workers' Compensation Commission (Commission)]." The plain language of the rule indicates that the employee may request travel reimbursement from the carrier in

order for the employee to obtain reasonable and necessary medical care. We see no reason to differentiate as to who provides that transportation.

Further, whether the claimant is entitled to reimbursement for travel expenses under Rule 134.6 was a factual question 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). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain. Applying this standard, we find no grounds upon which to reverse the decision of the hearing officer.

CONTRIBUTION

The carrier contends that the hearing officer erred in his determination that the carrier is not entitled to a 73% reduction of the claimant's SIBs based on contribution from an earlier compensable injury to the claimant's neck in 1995. Section 408.084(a) provides that, at the request of an insurance carrier, the Commission may order that impairment income benefits and SIBs be reduced in a proportion equal to the proportion of a documented impairment that resulted from earlier compensable injuries. In determining the reduction in benefits because of contribution of a prior compensable injury, the Commission is to consider the "cumulative impact of the compensable injuries on the employee's overall impairment" Section 408.084(b). Whether there is a cumulative impact, and, if so, the amount of such cumulative impact is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94578, decided June 22, 1994. It is well-settled that "[s]imply proving the occurrence of a previous compensable injury will not sustain the carrier's burden to prove the interaction of that injury with the current one on the present impairment." Texas Workers' Compensation Commission Appeal No. 971348, decided August 28, 1997. The consideration of the cumulative impact from prior injuries requires an assessment not only of the impairment from previous injuries, but also an analysis of how the injuries work together. Texas Workers' Compensation Commission Appeal No. 950268, decided April 10, 1995. This analysis includes considering the IRs from the prior compensable injuries and the present injury, and the components of the IRs. See Texas Workers' Compensation Commission Appeal No. 950735, decided June 22, 1995; Texas Workers' Compensation Commission Appeal No. 951019 decided August 4, 1995.

The carrier had the burden of proof on the contribution issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Having reviewed the record, we are satisfied that the challenged determinations of the hearing officer regarding the contribution issue are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain. Accordingly, the hearing officer's determination that the carrier is entitled to a 50%

reduction of the claimant's income benefits (rather than 73% as requested by the carrier) based on contribution from an earlier compensable injury is affirmed.

We affirm the decision and order of the hearing officer.

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

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

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret Turner
Appeals Judge