

APPEAL NO. 032948
FILED DECEMBER 15, 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 (CCH) was held on October 13, 2003. With regard to the two disputed issues before him, the hearing officer determined that the appellant's (claimant) compensable neck, lumbar contusion, and head injury of _____, does not extend to and include major depression disorder, anxiety, and/or posttraumatic stress disorder (PTSD) (collectively referred to as the claimant's psychological condition); and that the claimant's impairment rating (IR) is 5% as assessed by the designated doctor, whose opinion was not contrary to the great weight of other medical evidence.

The claimant appeals, both generally asserting that the decision is against the great weight of the evidence and specifically that the respondent (self-insured) did not timely dispute the psychological conditions on which a 70% IR was based. The file does not contain a response from the self-insured.

DECISION

Affirmed.

Attached to the claimant's appeal are documents labeled Attachment "A" through "L." Our review of the record indicates that some of the attachments were from the claimant's exhibits at the CCH, others were from the self-insured's exhibits, and other documents were submitted for the first time on appeal. Our review of the case is limited to the record developed at the CCH and we will not normally consider documents (reports) submitted for the first time on appeal. See Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ) for the standard which might require a remand. In that the documents all appear to have been available at the time of the CCH we do not find a remand warranted or appropriate.

We also note that in evidence as Hearing Officer's Exhibit No. 5 are Letters of Guardianship naming the claimant's husband as guardian for the claimant, an incapacitated person.

On the merits, the claimant was a mental health worker or patient aide at one of the self-insured's mental health facilities when she was assaulted by a client/patient, who knocked her into a water fountain and against a wall on _____. The claimant apparently "passed out momentarily" and was taken to the hospital. The claimant was initially diagnosed with acute neck pain, acute low back pain, and posttraumatic headache by Dr. L. The parties stipulated that the claimant sustained a compensable neck, lumbar contusion, and head injury. Dr. L continued to treat the claimant from November 15, 2000, through September 17, 2001. Although it is not entirely clear how the claimant came to be seen by Dr. C, Dr. C referred the claimant to

Dr. N, a clinical psychologist, on May 15, 2001. Dr. N, in a series of reports beginning May 21, 2001, diagnosed the claimant with postconcussion syndrome, dementia due to head trauma, mood disorder due to head injury, depression, and PTSD. Dr. N has since passed away, probably in early 2002. At some point, possibly December 2002, the claimant began seeing Dr. H, who is the current treating doctor. Dr. H, in a report dated September 23, 2003, relates the claimant's psychological conditions to the work-related accident.

The records and the hearing officer's Statement of the Evidence would indicate there were three designated doctors, and the hearing officer asked the parties to comment on that fact, but that was not done. The parties stipulated that Dr. R was appointed by the Texas Workers' Compensation Commission (Commission) to evaluate the claimant. The parties stipulated that the claimant reached statutory maximum medical improvement (see Section 401.011(30)(B)) on October 23, 2002. Dr. R initially assessed the IR using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (4th edition AMA Guides) when in fact the parties agreed the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (3rd edition AMA Guides) was the proper version to be used. Dr. R submitted an amended report dated January 26, 2003, using the 3rd edition AMA Guides assessing a 5% IR from Table 49 Section (II)(B). Dr. R commented that the claimant's "presentation of mental illness is not indicative of a condition caused by her compensable injury." In responses to requests for clarification dated March 12, 2003, May 13, 2003, June 22, 2003, and August 23, 2003, Dr. R confirmed his original assessment; in the May 13 and June 22 reports Dr. R explained why he does not think the psychological conditions are related to the compensable injury and in the August 23 report states that if the Commission determines that the psychological conditions are compensable then the claimant would have a 70% IR as assessed by another doctor under the 4th edition AMA Guides. Dr. W a self-insured required medical examination doctor essentially agreed with Dr. R's assessment.

Regarding the extent-of-injury question, there was conflicting medical evidence (contrary to the claimant's contention on appeal) and it is the hearing officer, as the finder of fact, who resolves the conflicts and determines what facts the evidence has established. The hearing officer's determination is supported by the evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. The claimant, for the first time on appeal, argues that the self-insured was aware of the possibility of a claim for psychological problems arising out of the compensable injury as early as May 2001 and that the self-insured did not timely dispute the psychological conditions until June 2003. We note that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)) provides that Section 409.021 and the implementing provisions of this statute in Rule 124.3(a) "do not apply to disputes of extent of injury."

Regarding the IR, in that the IR hinges on the question of whether the compensable injury includes the disputed psychological conditions, having affirmed the hearing officer's determination on the extent of injury we also affirm the determinations on the IR. We would further note that Section 408.125(e) provides that the report of the designated doctor, Dr. R, shall have presumptive weight and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. The hearing officer accorded Dr. R's report, assessing a 5% IR, presumptive weight and determined that it was not contrary to the great weight of the other medical evidence.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not 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).

We affirm the hearing officer's decision and order.

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

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge