

APPEAL NO. 040001
FILED FEBRUARY 25, 2004

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 December 9, 2003. The hearing officer determined that the appellant's (claimant) compensable injury of _____, "does not include vertigo and dizziness at this time."

The claimant appeals, contending that no medical reports support the hearing officer's conclusion; that the claimant did not have the complained-of conditions before lumbar surgery and had them after the compensable lumbar surgery, therefore, they must be causally related; and that all the medical records "affirmed that the vertigo and dizziness was, in fact, caused in some manner by the operation." The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant had a compensable injury on _____, in a slip and fall. The carrier has apparently accepted a compensable cervical and lumbar injury. It is undisputed that the claimant had lumbar surgery (fusion and decompression at L4-5) on September 25, 2001. The claimant testified (and it is relatively undisputed) that upon waking after surgery, she had the vertigo and dizziness at issue in this case. In evidence are reports or records of nine different doctors, none of whom state within a reasonable degree of medical probability that the claimed conditions were caused by the compensable injury or lumbar surgery.

The claimant cites a report dated February 14, 2002, from Dr. N a neurologist, as evidence of causation. However, Dr. N, after reviewing various testing results, said the tests "show some abnormality" which "could be for many different reasons why." Dr. R, the carrier's required medical examination doctor, in a report dated August 22, 2003, in discussing the lumbar surgery and the claimant's vertigo states "in that very real sense it is related to her job injury since it followed the lumbar procedure." In another report Dr. N was asked if the claimed conditions are causally related to the job injury and Dr. N replied that the claimant "has vertigo of an undetermined etiology, and, because it is related to her lumbar surgery, it is related to her on the job injury." Dr. H, the surgeon who did the lumbar surgery writes "[t]here is no question that her recurrent vertigo has been an adverse outcome from the surgery on September 25, 2001." However none of the doctors are able to explain how or why they reached their conclusions other than to say since it occurred after the surgery it must have been caused by the surgery.

The Appeals Panel has noted that where, as here, the causal connection is not a matter of general knowledge the claimant must prove the causal connection by

reasonable medical probability. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). The fact that proof of causation is difficult does not relieve a claimant of the burden of proving it. Texas Workers' Compensation Commission Appeal No. 93665, decided September 15, 1993. Other than observations that the vertigo followed the surgery there is no evidence within a reasonable medical probability to show how the surgery caused, or under some other theories, the cervical injury has caused the vertigo and dizziness. As Dr. N states, the vertigo is of an undetermined etiology.

Whether necessary causation exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94266, decided April 19, 1994. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.166(e)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge